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Miscellaneous:

Attorney General's Committee on Administrative Procedure (S. Doc. No. 10, Part 4, 77th Cong., 1st Sess., Monograph on Railway Labor, pp. 3–4) 20, 24, 33
Cook, Morris L. and Murray, Philip, *Organized Labor and Production* (1940), 192–193 3
Dash, Allen G., *Bargaining Through the Grievance Procedure* (American Management Association Personnel Series No. 82), *The Collective Bargaining Agreement in Action* (1944), 3–5 ..... 3, 25
Daugherty, Carroll R., *Labor Problems in American Industry* (1938), 450–453 ..... 3, 25
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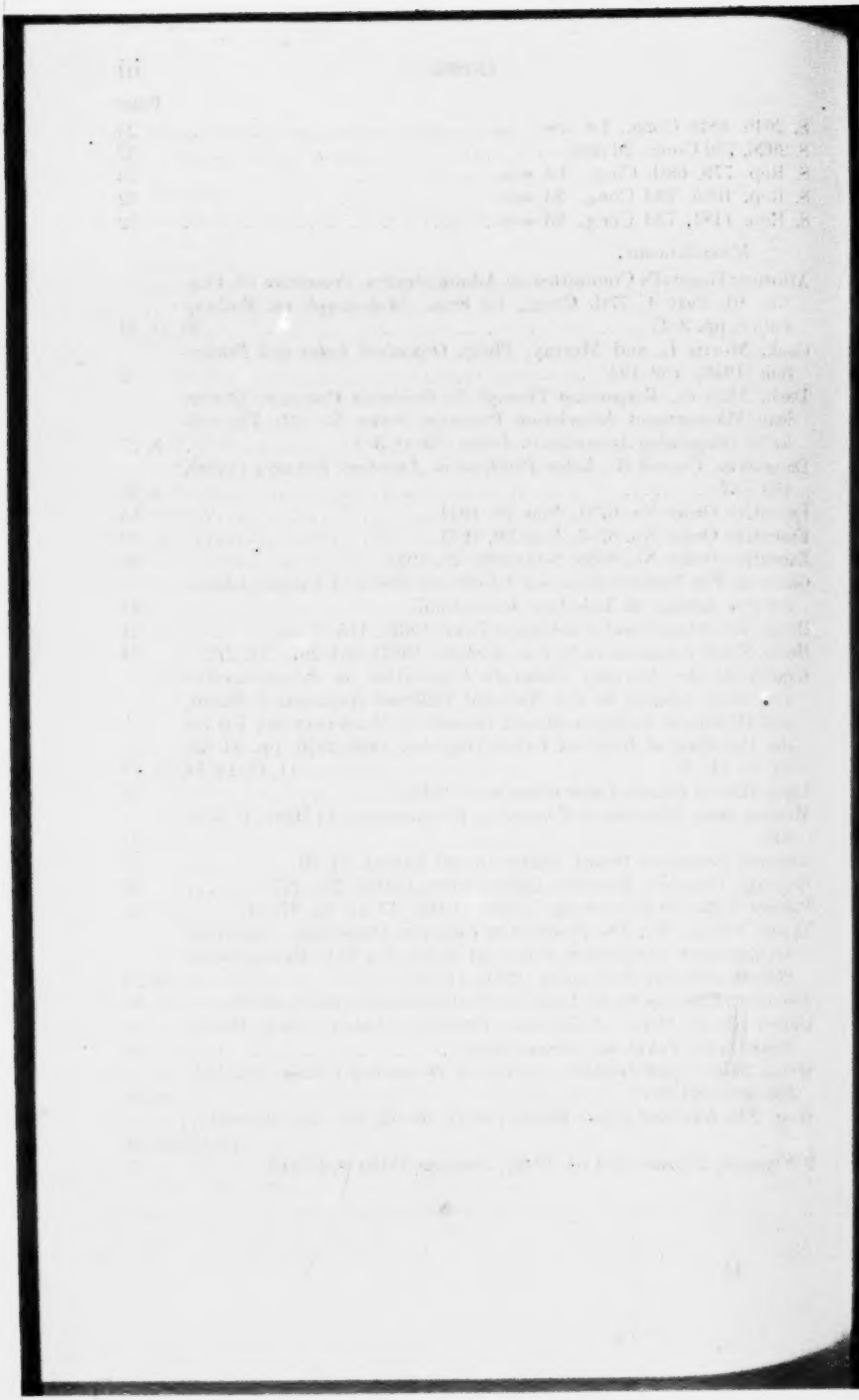
9 Wigmore, *Evidence* (3d ed. 1940), Sections 2510a and 2515 22



IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 160

ELGIN, JOLIET & EASTERN RAILWAY COMPANY,
Petitioner,

v.

G. W. BURLEY, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE ON REARGUMENT

The Court has invited the Solicitor General to submit a brief and participate in the reargument of this case.

Inasmuch as the facts are adequately set forth in the Court's opinion at the last Term, it seems unnecessary to restate them here. Relevant provisions of the 1920, 1926 and 1934 railway labor legislation are set forth in Appendix A. *infra*, pp. 37-45.

Introductory Statement

The original opinion holds (1) that in the absence of proof of authority from each individual employee involved which would be sufficient under the law of agency, the representative chosen by the majority of the bargaining unit has no power to settle grievance cases related to accrued claims in negotiation with the carrier or to institute proceedings before the National Railroad Adjustment Board on behalf of the employees, and (2) that in the present state of the record the Court could not say that the employees had granted the Brotherhood such authority, either expressly or by reason of their belonging to the Brotherhood.

We had been of the opinion that, at least in so far as members of the Brotherhood were concerned, there could be no question as to the authority of the organization to represent them in handling grievances even under the principles of agency. Inasmuch as this case only involved Brotherhood members, we had not thought that the broader question would be reached and hence had not sought to present our views. But the significant question decided by the Court is that a labor organization may not settle grievances for its members in the absence of express authorization, an issue which is relevant only on the assumption that the General Rules of the Brotherhood do not contain any such authority. Since it is the decision on this point which has unsettled the normal processes of grievance adjustment and which has prompted us to suggest a reconsideration of the case, we shall address our discussion to that proposition.

The facts of this case present questions as to whether and under what circumstances a labor organization representing a craft has any authority (1) to settle grievance claims with the carrier, and (2) to submit such claims to the Adjustment Board. Here the Adjustment Board award

rested on the prior settlement, so that the validity of the settlement may be regarded as underlying the entire case. In any event, we think the Court properly deemed the authority of the representative in the two situations governed by the same principles (Op., p. 14). Inasmuch as the great majority of cases are disposed of on the properties by agreement, the impact of the decision on settlements through negotiations between carriers and representatives is probably of greater significance than its effect on the operations of the Adjustment Board.

It is also to be noted that this case involves members of the labor organization representing the bargaining unit. It has not hitherto been suggested that this made any difference, apart from the relationship between union membership and the existence of agency authority, and we are not inclined to suggest that any line ought to be drawn between members and non-members of the union. But some of the material to which we shall refer appears to differentiate between the authority of the union to represent members and non-members in handling grievances and more clearly supports the right of the union to represent members than non-members. For purposes of this case it is unnecessary, of course, to determine the rights of employees who are not members of the organization which has acted as their representative.

It is often and properly said that the disposition of grievances is an essential and important part of the collective bargaining process.[1] Amicable relationships between em-

[1] Twentieth Century Fund, *Labor and the Government* (1935), 46-49; Carroll R. Daugherty, *Labor Problems in American Industry* (1938), 450-453; Webb, Sidney and Beatrice, *Industrial Democracy* (1920), 234-237; George W. Taylor, *The Function of Collective Bargaining* (American Management Association, Personnel Series No. 81), *Management's Stake in Collective Bargaining* (1944), 11-13; Allen G. Dash, *Bargaining Through the Grievance Procedure* (American Management Association Personnel Series No. 82), *The Collective Bargaining Agreement in Action* (1944), 3-5; Morris L. Cook and Philip Murray, *Organized Labor and Production* (1940), 192-193.

ployers and employees are dependent upon the fair settlement of the large number of relatively minor cases involving the interpretation and application of contracts and other grievances as well as upon the terms of the underlying contracts. Since the disparity of bargaining power between the individual employee and the employer is as marked in settling grievances as in negotiating contracts, the employees customarily handle their grievances collectively through labor organizations. When they do they are bargaining collectively in a true sense.[2]

This does not mean, however, that the disposition of grievances must be treated in all respects identically with the negotiation of contracts. It seems clear that as to certain types of grievance cases the interest of the individual is much greater, in contrast with that of the entire bargaining unit, than in the formulation of the general contract. A great deal has been said on both sides as to whether the difference is great enough to warrant a differentiation in treatment under the law; in particular, arguments of policy have been presented as to whether the exclusive right of the representative designated by the majority of the craft should or should not extend to grievances as well as to negotiating contracts.[3] Constitutional questions aside, the issue, however, seems clearly to be one of policy for Congress to decide, and we assume that no one would deny that Congress could exclude that portion of collective bargaining relating to grievance handling from the principle of exclusive majority rule. It also cannot be denied that in the Railway Labor Act Congress has established a separate

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[2] It follows that if the employer refuses to treat with the designated union on grievances he is refusing to bargain collectively. *Rapid Roller Co.* v. *National Labor Relations Board*, 126 F. 2d 452, 457-9 (C. C. A. 7), certiorari denied, 317 U. S. 650.

[3] See the briefs filed on behalf of the Railway Labor Executive Association and the C. I. O. as *amici curiae*.

machinery for grievance cases. The first question reached in this case is whether these special provisions mean that the collective representative has no exclusive right under the statute to settle grievance cases for members of the craft or class.

I

THE NON-EXCLUSIVE NATURE OF THE LABOR ORGANIZATION'S RIGHT TO HANDLE GRIEVANCES

Although a number of theories have been advanced as to the precise relationship under the Act of the individual and the collective representative in the disposition of grievances, there is a substantial area in which there can be little basis for disagreement. We agree with the Court, petitioner and respondent, that the individual employee has the right to present grievances either to his employer or to the Adjustment Board, a right which allows him at least to argue the merits of his case.[4] There is also substantial agreement that the collective representative must be consulted—or at least notified[5]—whenever a grievance case involves an interpretation of the collective agreement or an application which may be of interest to the bargaining unit as a whole. Although the Court's opinion leaves the question open, it seems to recognize (Op., pp. 20–21) that there may be an important collective interest in many such cases. The effectuation of the collective representative's right to act on behalf of the craft in bargaining in the strict sense requires that it have a voice in the disposition of such matters.

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[4] This is admitted in the *amicus* brief for the the C. I. O. (p. 20), though not in the *amicus* brief for the Railway Labor Executives Association (see pp. 19, 27).

[5] *Hughes Tool Co.* v. *National Labor Relations Board*, 147 F. 2d 69 (C. C. A. 5).

There may be cases in which the collective interest is too slight to warrant participation by the representative. Whether or not a case is of that character would seem to be a matter for the collective representative itself to decide. But clearly, as this Court recognized (Op., p. 20), this is not such a case, and we are not here called upon to consider how other types of cases should be handled or to decide where, if anywhere, a dividing line between cases of collective and of purely individual interest should be drawn.

The Court's opinion (Op., p. 19) properly narrows the issue to the determination of the capacity in which the individual and the representative participate in the procedure—whether the right of each is merely to be heard or is to participate in the disposition of the grievance. We think that where the case involves a question as to the interpretation of the collective agreement, as here, even as to a past claim, the representative must have a right to do more than merely present his views. For the agreement is the product of the negotiation between the carrier and the representative and the construction they put upon it should be controlling.[6] In this case, however, it is not necessary to determine whether the representative is a necessary party to the settlement, but whether and in what circumstances the employee is.

Although petitioner does not contend that the individual's right is only to be heard and not to participate in the final determination of the grievance, that position is taken by other *amici curiae*. The Court has rejected this sug-

[6] This is well understood in the industry, so that there is no problem when the employer and the representative agree upon an interpretation even if an individual employee or a minority should be of a different view. There is also no difficulty as to the employees' position in an interpretation case where the individual interprets the agreement in exactly the same way as the majority representative, as is true here; the question as to whether in such circumstances the case shall be compromised on a particular financial basis is not one of interpretation of the underlying agreement.

gestion, and we believe correctly. Although most grievance cases were handled by the collective representative, the usual practice (cf. Section 3, First (i)) on the railroads prior to 1934 permitted individuals and minority organizations both to present and to settle grievance claims, always subject to the reservation that the "recognized interpretation" of the agreement by the carrier and the collective representative was controlling.[7] The decision of the Railroad Labor Board, which first clearly enunciated the majority rule principle, provided that (Decision No. 119, 2 Railroad Labor Board 87, 96):

> 15. The majority of any craft or class of employees shall have the right to determine what organization shall represent members of such craft or class. Such organization shall have the right to make an agreement which shall apply to all employees in such craft or class. No such agreement shall infringe, however, upon the right of employees not members of the organization representing the majority to present grievances either in person or by representatives of their own choice.

The phrase "to present grievances" was not regarded as limiting the individual employee or the minority "not members of the organization representing the majority" to the submission of the case to the management and the collective representative jointly. On the contrary, except for the reservation previously noted, the collective representative apparently took no part in the proceedings.

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[7] As to the practice of minority representation among the train service brotherhoods, see p. 19 *infra*, and the Transcript of Record in *General Committee* v. *Southern Pacific Co.*, 320 U. S. 338. The evidence in that case was accurately summarized in the findings of fact of the district court (R. 48-50) to the effect that the "usual manner of handling" included the "presentation and handling to conclusion" of a claim by the individual or organization to which he belonged, irrespective of whether it was the collective representative. The pertinent findings are set forth in the Appendix (*infra*, pp. 45-47).

That an individual or minority group was to have a voice in the disposition of the cases and not merely a right to be heard is confirmed by the statements of Coordinator Eastman and Mr. Harrison, who explained the 1934 bill to the Congressional committees,[8] as well as by the explanation of the 1926 Act, which contained substantially identical provisions relating to this aspect of grievance procedure, by Mr. Richberg.[9] The National Mediation Board on three occasions and an emergency board have recognized that the collective representative does not have the exclusive right to handle grievances.[10] These statements by those who explained the Act to Congress and who subsequently administered it are, of course, highly persuasive. And in the one prior judicial proceeding in which the point was raised (*General Committee* v. *Southern Pacific Co.*, 122 F. 2d 194 (C. C. A. 9), reversed on jurisdictional grounds, 320 U. S. 338), the circuit court of appeals held that the craft representative had no exclusive right in grievance cases. Neither these authorities nor the other related contemporaneous statements under the National Industrial Recovery Act (48 Stat. 195) and Public Resolution No. 44 (48 Stat. 1183) contain any intimation that the employee was to "present" grievances to anyone but the employer or that the right to present did not include the power to dispose of, settle or adjust.[11]

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[8] See Hearings before House Committee on Interstate and Foreign Commerce on H. R. 7650, 73d Cong., 2d sess., pp. 44, 83, 89.

[9] See Hearings before House Committee on Interstate and Foreign Commerce on H. R. 7180, 69th Cong., 1st sess., pp. 42, 67, 81-84; Hearings before Senate Committee on Interstate Commerce on S. 2306, 69th Cong., 1st sess., pp. 125-126. The 1934 Act altered the 1926 scheme by providing for exclusive majority rule in the negotiation of contracts, but the pertinent provisions relating to grievances remained unchanged. See pp. 15-17, *infra*.

[10] We have set forth in the Appendix, *infra*, pp. 45, 47-51, excerpts from the opinion and rulings of these boards, all but one of which appear in full in the Transcript of Record in *General Committee* v. *Southern Pacific Co.*, 320 U. S. 338. See also fn. 2, at 320 U. S. 342-343.

[11] This material is summarized in the Appendix, *infra*, pp. 51-53.

Although for these reasons we agree with the Court's premise that the collective representative does not have an exclusive right to adjust grievances even for the members of the bargaining unit, we do not think that it necessarily follows that the majority organization may only represent persons from whom it has obtained agency authority. The underlying reason for recognizing the individual's right is to enable him to protect himself when he believes that the organization will not adequately represent him. In the light of the problems presented in *Steele* v. *Louisville & Nashville R. Co.*, 323 U. S. 192, and *Moore* v. *Illinois Central R. Co.*, 312 U. S. 630, and of the practice of the Adjustment Board and of some of the organizations with respect to individuals' claims, we share the Court's solicitude as to the rights of individuals in grievance cases.[12] Those rights may be adequately protected, in our opinion, without destroying the established methods for the handling of grievances. The *Steele* and *Moore* cases in themselves provide the individual with substantial protection. The former imposes on the collective representative a duty to act in good faith and without discrimination on behalf of all members of the bargaining unit; any disposition of a grievance in disregard of that principle would be unlawful and obviously not binding. The *Moore* case upholds the right of an individual to maintain an action in court on a grievance instead of submitting it to the Adjustment Board. In addition, we think it recognizes by necessary implication what the Court has now held, that the individual has the right to present a grievance and adjust it with the carrier individually or through any representative he chooses, and that he has the

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[12] See the briefs for the United States as *amicus curiae* in *Moore* v. *Illinois Central R. Co.*, 312 U. S. 630, *General Committee* v. *Southern Pacific Co.*, 320 U. S. 338, and *Steele* v. *Louisville & Nashville R. Co.*, 323 U. S. 192.

same alternative in submitting cases to the Adjustment Board.[13]

As long as the individual has the right and power to avail himself of these means whenever he wishes, we believe that he is adequately safeguarded. But in the vast majority of cases the individual not only has no desire to represent himself, but his bargaining power is greatly enhanced when he is represented by the organization. It is thus to the great advantage of the employees individually that no obstacles be placed in the way of the handling of grievances through the collective representative.

II

THE PRACTICE OF HANDLING GRIEVANCES WITHOUT ANY AFFIRMATIVE SHOWING OF AGENCY AUTHORITY

Before the 1934 amendatory act was passed, the customary practice on the railroads was for grievance cases to be handled by the labor organization without the necessity for showing special authorization from each employee,[14] although the right of the individual to handle his own case if he wished was not denied. The organizations normally only submitted the grievances of their members, but on occasion they represented non-members as well. In all such cases, unless put on notice to the contrary, the carrier assumed, or presumed, that the organization had the necessary authority, and disputes were settled, on the property and by the adjustment boards, on that basis.

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[13] As the Court knows, the Adjustment Board has not recognized the individual's right to appear except through an organization, although it has recognized the right of employees to appear through organizations represented on the Board which do not represent the majority of a craft or class.

[14] Although this brief is concerned only with the railroad industry and railroad legislation, we understand that the practice in other industries as to authorization is the same. See references cited in note 32, *infra*, p. 24.

We think it clear that the 1934 amendment was not meant to require departure from the prior practice in handling grievances, and that although, both before and since 1934, individuals possessed the right to adjust their own grievances when they wished, in the absence of any manifestation of desire by an individual to exercise that right Congress intended that the carrier negotiate with the collective representative as before.

The prior practice will appear from an outline of the history of the machinery for adjustment of grievances. That Congress did not intend to change the practice will appear from an examination of the Act itself, its history and objectives.

The first predecessor to the present Adjustment Board was established by the Director General of Railroads in 1918. Three identical agreements between the labor organization and Regional Directors of the Railroad Administration established national adjustment boards, composed of equal representatives of labor and of management.[15] These agreements are sufficiently important to warrant quoting two of their provisions in full:

> 10. Personal grievances or controversies arising under interpretation of wage agreements, and all other

[15] The material referred to in this portion of the brief is taken from a compilation of material on the Adjustment Board entitled "Inquiry of the Attorney General's Committee on Administrative Procedure relating to the National Railroad Adjustment Board, and Historical Background and Growth of Machinery Set Up for the Handling of Railroad Labor Disputes, 1888-1940". This volume (hereinafter cited as "Compilation") is a compilation of most of the pertinent documentary material relating to the National Railroad Adjustment Board. It contains in full the reports of and proceedings before the Attorney General's Committee on Administrative Procedure dealing with the Adjustment Board, and reprints the executive orders, collective labor agreements, and statutes disclosing the history of the Adjustment Board and also the leading speeches and articles describing its operation. This publication was compiled by Harry E. Jones, Executive Secretary, Eastern Committee for the National Railroad Adjustment Board, New York City. Most of the documents hereinafter referred to are printed in the Appendix to the volume (the separately numbered *pink* pages).

disputes arising between officials of a railroad and its employees, covered by this understanding, *will be handled in their usual manner* by general committees of the employees up to and including the chief operating officer of the railroad (or some one officially designated by him), when, if an agreement is not reached, *the chairman of the general committee of employees* may refer the matter to the chief executive officer of the organization concerned, and if the contention of the employees' committee is approved by such executive officer, the chief operating officer of the railroad and the chief executive officer of the organization concerned shall refer the matter, with all supporting papers, to the Director of the Division of Labor of the United States Railroad Administration, who will in turn present the case to the Railway Board of Adjustment No. 1, which board shall promptly hear and decide the case, *giving due notice* to the chief operating officer of the railroad interested and *to the chief executive officer of the organization concerned of the time set for hearing.*

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12. In hearings before the Railway Board of Adjustment No. 1, in matters properly submitted for its consideration, the railroad shall be represented by such person or persons as may be designated by the chief operating officer, and the employees shall be represented by such person or persons as may be *designated by the chief executive officer of the organization concerned.*[16] [Italics supplied.]

The above sections show that both on the property and before the adjustment boards the employees' contentions in grievance cases were made only by and through the union committees and officers. Paragraph 10 also contains the expression, which has survived up through the present Act, that the grievances are to be "handled in their usual manner"; the modifying phrase "by general com-

[16] Compilation, *supra*, p. 21.

mittees of the employees''—which is not found in the present law—would appear to be descriptive of the prior manner of handling by union members as well as mandatory.

As has been noted, the agreements were signed on behalf of the employees by the heads of the railway labor organizations. In the absence of any legal requirement for majority rule, these officials could only act for their members. The agreements on their face seem only adapted to handling the cases of union members, and this seems to have been the understanding.[17] As a consequence the Director General established by order a procedure for the disposition of grievances of ''employees not represented by Railway Boards of Adjustment.'' Such cases were to be ''handled in the usual manner by the individual, his representative, or by committees of employees,'' and if an agreement was not reached by the carrier, submitted to members of the staff of the Director General who rendered the same service as boards of adjustment.[18]

Title III of the Transportation Act of 1920 (41 Stat. 456) sought to reestablish the Boards of Adjustment, which had disappeared with the expiration of the Railroad Administration. Section 302 of the Act declared that Boards of Adjustment ''may be established by agreement.'' Section 303 provided that such boards should hear and decide grievances ''upon the application of the chief executive of any carrier or organization of employees'' and ''upon the written petition signed by not less than 100 unorganized employees.'' Section 307 contained identical requirements as to applications by the chief executive of the organization and by one hundred unorganized employees for the submission both of grievances not settled by an adjustment board and of other disputes to the Railroad Labor Board.

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[17] See Wolf, *The Railroad Labor Board* (1927), pp. 52, 53.

[18] See Compilation, *supra*, pp. 31-32.

These provisions show that it was contemplated that union members were to be represented in all cases, including grievances, by the union officials. This understanding is confirmed by the Railroad Labor Board's statement of principle (*supra*, p. 7) which preserved only the rights of non-members to present grievances individually. We do not read the restriction of the right to invoke the Board's services to one hundred unorganized employees as depriving a smaller number of individuals of all rights to safeguard their own interests. The Act was only concerned with disputes on a scale large enough to interrupt commerce, and the individual undoubtedly retained other remedies available, either by way of individual adjustment with the carrier or in court.

The precatory adjustment provisions of the 1920 Act were quite ineffective; few adjustment boards were established. Regional boards were created, however, for the train service employees in three sections of the country. Paragraph 8 of these agreements was almost identical with Paragraph 10 of the 1918 adjustment agreements. It provided for the handling of "disputes arising between a railroad and its employees covered by this agreement • • • in their usual manner by general committees" and for reference of the case by the chief executive of the organization, if he approved the employee's contention, to the board.[19] In deference to the 1920 statute these agreements also permitted petitions "by not less than one hundred unorganized employees of the classes covered by this agreement."[20] Presumably because of this additional feature, instead of the 1918 provision for representation only by the persons designated by the chief executive or officers of the organization, Paragraph 10 of the 1920 contracts

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[19] See Compilation, *supra*, pp. 40, 44, 51.
[20] *Ibid.*

permitted employees to "be represented by such person or persons as may be designated by them."[20] The agreements also conditioned the right of 100 unorganized employees to file a case by a proviso, that "no dispute over an interpretation of an existing agreement, rule or practice which has been agreed to or accepted by the management and the duly constituted committee representing the employees, parties thereto, shall be considered as a dispute under this agreement."[20] This proviso indicates that unorganized employees were not to be permitted to override an interpretation of the agreement between the carrier and the organization acting for the craft. It also strongly implies that in other respects unorganized employees could represent themselves if they so desired. But here too it was clearly understood that the organized employees would be represented by the organization, which alone could submit their cases to the Board, without any suggestion that further special authorization was at all essential.

The failure of the carriers and the organization to establish adjustment boards between 1920 and 1926 resulted in the Railroad Labor Board's being swamped with grievance cases.[21] The Railway Labor Act of 1926 (44 Stat. 577) sought to cure this difficulty in the 1920 law by appearing to make the establishment of adjustment boards mandatory. Section 3 of the Act provided that:

> "Boards of adjustment *shall* be created by agreement between any carrier or group of carriers, or the carriers as a whole, and its or their employees. [Italics supplied.]

Section 3 then required that the agreements for the establishments of adjustment boards:

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[20] *Ibid.*

[21] Wolf, *The Railroad Labor Board* (1927), p. 371; Hearings before the Senate Committee on Interstate Commerce on S. 2646, 68th Cong., 1st sess., p. 4 (testimony of D. B. Robertson).

(c) Shall provide that disputes between an employee or group of employees and a carrier, growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, that the dispute shall be referred to the designated adjustment board by the parties, or by either party, with a full statement of the facts and all supporting data bearing upon the dispute;

(d) Shall provide that the parties may be heard either in person, by counsel, or by other representative, as they may respectively elect * * *. Adjustment boards shall give due notice of all hearings to the employee or employees and the carrier or carriers involved in the dispute;

These provisions, it should first be noted, are substantially identical with Section 3, First (i) and (j) of the 1934 law governing proceedings before the present Adjustment Board.[22] The major change from the equivalent paragraphs of the 1920 Act and the agreements under it was the elimination of the differentiation between organized and unorganized employees. The former were no longer expressly required to act through the committees or officials of the organization, nor were the latter permitted only to proceed in groups of at least one hundred. The reaffirmation that disputes were to be "handled in the usual manner" refutes, however, any notion that other changes in the method of dealing with grievances were proposed.

That the boards under the new Act were to be of the same type as their predecessors was clearly indicated. In explaining the 1926 Bill to the House Committee, on behalf

[22] None of the slight verbal differences between the 1926 and 1934 paragraphs is of consequence here.

of both the labor organizations and the carriers, Mr. Donald Richberg stated: "Of course, these boards of adjustment * * * are quite well understood as a term, we will say, in railroad operation—that is, the board of adjustment is a well understood thing."[23] Representative Cooper, a member of the House Committee, in explaining the bill on the floor stated (67 Cong. Rec. 4505): "This is not a new procedure. For years it has been the custom of many railroads and of their employees to adjust disputes that might arise from time to time by boards of adjustment, members of which understood the problems by reason of their technical knowledge of industry." In addition, Senator Watson, who introduced the bill, and Representative Barkley, who explained it to the House, praised the 1918 adjustment boards and indicated that the adjustment provisions of the Railway Labor Act were modeled on them. 67 Cong. Rec. 4510-4511, 4517, 8808.

The 1926 Act also contained, in Paragraph First, Second and Fourth of Section 2, the identical provisions now found in Paragraphs First, Second and Sixth of Section 2 of the present law. Paragraph Fourth (now Sixth) declared that in grievance cases

> it shall be the duty of the designated representative or representatives of such carrier and of such employes, within ten days after the receipt of notice of a desire on the part of either party to confer in respect to such dispute, to specify a time and place at which such conference shall be held.

This reference to "designated representative", as contrasted with "employees or groups of employees", "the parties or either party", and "any person, by counsel

[23] Hearings before House Committee on Interstate and Foreign Commerce on H. R. 7180, 69th Cong., 1st sess., p. 82.

or other representative", found in Section 3 of the 1926 Act, would appear primarily to mean a labor organization. The language is almost the same as that found in Section 6, which both in 1926 and 1934 similarly provided for notices and conferences with respect to changes affecting rates of pay, rules or working conditions, such as collective bargaining agreements.

In so far as the settlement of grievances was concerned, the 1926 Act was no more successful than the 1920 (Op., p. 12). The carriers still insisted on system boards and the unions on a national board. The boards previously established for train service employees were continued, however, and a new board created for the southwestern region. In addition, a number of system boards were created for other classes of employees.

The new train service agreement showed the effect of the changes in the law. The provision for adjustment by one hundred unorganized employees was eliminated. The agreements were declared to be between the carriers and "their employees represented by the following named organizations:"[24] The paragraphs required by the Act (quoted, *supra*, pp. 15-16) were included, but the agreement contained in addition (and perhaps in contradiction) substantially the same paragraph as the 1921 agreement that

> 10. Disputes which have been handled in the usual manner up to and including The Chief Operating Officer of the railroad (or someone officially designated to act for him) and in respect to which an agreement has not been reached, *shall be referred by the representative or representatives of the employee or employees to the Chief Executive Officer of the organization concerned* and if the contention of the employee or employees is approved by such executive officer, then The Chief Operating Officer of the railroad and *The Chief Executive Officer of the organization* con-

[24] Compilation, *supra*, p. 57.

> cerned *shall refer the dispute to* The Board with a full statement of the facts and all supporting data, whereupon The Board shall promptly set the case for hearing and give reasonable notice to said Chief Operating Officer and said Chief Executive Officer of the time and place of hearing.[25] [Italics supplied.]

In practical effect the result was that cases were presented to the Board only through the labor organizations on behalf of their members. This did not mean, however, that the presentation must be through the organization which had represented the craft in making the collective agreement. The system whereby persons employed as firemen or brakemen advanced to engineer or conductor work in order of seniority, and moved back to firing or braking when persons were laid off, resulted in each of the four train service brotherhoods having members who worked in the companion craft under the agreement of one of the other organizations. As a consequence, the long recognized practice had been for each organization to represent its own members in grievance cases, irrespective of whether they were working under the contract of another organization, although subject to the recognized interpretation of the agreement by the parties to it.[26] This was the procedure under the various train service adjustment agreements, to which all of these brotherhoods, of course, were parties. In order to clarify this procedure, in 1933 the Eastern and Western Train Service Agreements were supplemented by statements of understanding as follows:[26a]

> It is understood that under Article 8 any organization party to the agreement, may submit cases to the Board, but the Board, before hearing the case, shall request the organization holding the schedule on

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[25] *Id.*, at 59.

[26] See Appendix, *infra*, pp. 46-49.

[26a] Compilation, pp. 50, 56.

the particular railroad to advise the Board promptly of its interpretation of the rule involved.

If practices under the rule involved are concerned, the practices under the agreement shall be ascertained from the Management and the General Committee of the organization holding the agreement.

After obtaining such data, hearings shall be held and decision rendered in accordance with the provisions of the agreement.

It appears from this review of adjustment procedures prior to 1934 that the labor organizations party to the adjustment agreement alone were permitted to represent their members before the boards. Before cases reached the adjustment boards, claims were to be handled "in the usual manner", which, for union members, customarily meant through their union officials.[27] There was no suggestion that the union was to present proof of authority or power of attorney, and this was not required either on the properties or before the boards. Although individuals had a right to handle their grievances independently and occasionally did so, within the limitations indicated, *supra*, pp. 5-7, the vast majority of grievances were disposed of between carriers and unions or by an adjustment board on the assumption that such authority existed.

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[27] The "usual manner" of handling is described by the Attorney General's Committee on Administrative Procedure (S. Doc. No. 10, Part 4, 77th Cong., 1st sess., Monograph on Railway Labor, pp. 3-4) (Compilation, *supra*, at 230) as follows:

> Individual employees ordinarily first present their claims to their foremen or other immediate superiors. If the claims are granted, the case ends; if they are denied, the employee submits his case to his local union. If the local union rejects it, the case ends, otherwise, the representative of the local union takes up the question with the local superintendent of the carrier. If no settlement is reached, the case goes to the general superintendent, then to the general manager, and finally to the chief operating officer. Cases are customarily presented to carriers' chief operating officers by designated officials of national unions. The great preponderance of all disputes that arise are, of course, settled through negotiation at some one of the levels.

This assumption, we submit, has a very practical basis. Although individuals may have always had the legal right to handle grievances separately, the disparity between their bargaining power as individuals and that of the railroad company is as great in grievance cases as in negotiating contracts of employment. The individual handling his own grievance is at the mercy of the employer, since he has no economic strength with which to fortify his demands. Only when he acts collectively, with the strength of his fellow workers behind him, is there any equality of bargaining power, and any likelihood that he will be satisfied with the result. Thus, except in those cases in which the organization does not act in good faith in his behalf, the individual will secure a more satisfactory settlement if the organization handles his case. This is true even as to an employee not a member of the organization, in those cases in which it is willing to act in his behalf.

These elementary facts are known both to the carriers and the employees. The result is that unless an individual has some personal reason in a particular case, he prefers to have the organization represent him as a matter of course. And in the normal case, although he may not be aware of what transpires at each stage of the adjustment process, he will know that the union is handling his case with the carrier. The instances in which he would wish it to be otherwise will be few and will consist in the main of cases in which the employee has taken some affirmative step to handle the case himself or through another representative.

It is thus entirely reasonable both for the carrier and the law to assume that the union is acting with the authority, or at least the acquiescence of the employee, unless the contrary appears before the case is settled or otherwise concluded. Such a presumption is "justified on logical

grounds by human experience," and "it furthers a result deemed to be socially desirable,"[27a] as we shall show.

III

THE 1934 ACT CONTEMPLATED NO BREAK WITH PRIOR PRACTICE

This background was undoubtedly familiar to the draftsmen of the 1934 Act. The original bill was prepared by Coordinator of Transportation Eastman and his staff. The bill was explained to the Congressional committees by Mr. Eastman and also by Mr. George M. Harrison, spokesman for the Railway Labor Executives' Association, who had participated in its preparation.

One of the most important defects in the 1926 Act related to the machinery for the handling of grievances. The reasons why the provision in that Act for the establishment of adjustment boards by agreement failed are recited in this Court's opinion (pp. 12-13). In brief, boards frequently were not established, and there was no way for disposing of deadlocked cases. The new bill was designed to remedy these conditions by creating a national adjustment board which would always be available if regional or system boards were not established by agreement, and by providing for the appointment of referees to decide deadlocked cases.

But except for these changes it was obviously contemplated that the adjustment boards and the entire grievance ma-

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[27a] See Morgan, *Some Observations Concerning Presumptions*, 44 Harv. L. Rev. 906. Somewhat analogous presumptions are those as to the authority of persons acting as officers of corporations (*United States Bank* v. *Dandridge*, 12 Wheat. 64, 69-70), as to the authority of an automobile driver as agent of the owner (9 Wigmore, *Evidence* (3d ed. 1940), § 2510a; *Young* v. *Masci*, 289 U. S. 253, 259), as to the existence of title to property from the fact of possession (Wigmore, *supra*, at § 2515). In each of these cases the probability that the person acting as if he had authority or title actually does have it is so great as to warrant a court in assuming it unless the contrary is shown.

chinery operate substantially as they had before.[28] As has been stated (*supra*, pp. 15-17), the most pertinent provisions of the 1926 Act were not altered. Before both House and Senate Committees, Mr. Eastman and Mr. Harrison began their explanation of the proposed new Section 3 with a history of the predecessor adjustment boards.[29] Mr. Eastman pointed out that:

> Three national boards of adjustment had operated during the period of Federal control and, on the whole, very successfully. The employees wanted similar boards established when the railroads were returned to private control, but the carriers were unwilling to agree to national boards.[30]

Both he and Mr. Harrison indicated that the 1920 and 1926 Acts had sought to retain the benefits of the boards established under Federal control, but failed in this regard because the boards were to be created only by the agreement of parties who would not agree. In 1924 the employees had sought the enactment of a bill providing for a national board modeled on the 1918 adjustment machinery;[31] the carriers

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[28] It may be said that under the 1934 Act individuals for the first time were to be allowed to present grievances to the adjustment board. We agree that individual employees have such a right, but believe that it also existed under the 1926 Act, which contained the same language as the present paragraphs (i) and (j) of Section 3 First. See pp. 15-16 *supra*. This right does not seem to have been recognized in practice under the train service adjustment agreements or by the present Adjustment Board.

[29] See Hearings before House Committee on Interstate and Foreign Commerce on H. R. 7650, 73rd Cong., 2d sess., pp. 45, 80; Hearings before Senate Committee on Interstate Commerce on S. 3266, 73rd Cong., 2d sess. pp. 15, 30.

[30] House Hearings, p. 45; Senate Hearings, p. 15.

[31] This was the Howell-Barkley bill, S. 2646, 68th Cong., 1st sess., which contained many provisions found in the subsequent Railway Labor Act. The bill was reported favorably to the Senate (S. Rep. 779, 68th Cong., 1st sess.), but the session ended before action was taken. In the House the bill was forced out of committee, but the tactics of the majority leadership prevented a vote on the merits. See Wolf, *Railroad Labor Board* (1927), 407-414.

opposed this, and the compromise measure of 1926, submitted by the organizations and the carriers jointly, was substituted in its stead. Finally, in 1934, it was thought necessary to return substantially to the 1918 pattern, as the labor organizations had consistently urged.

There is, of course, no specific mention in the history of the 1934 Act, or of the earlier laws for that matter, of the present problem. If the case were that easy this reargument would be unnecessary. The only controversial issue was as to the national character of the Board. There was no discussion at all of the details of grievance handling. The derivation of the adjustment provisions, as well as the general statements in the hearings indicate, however, that it was clearly understood by all that in its essential elements the processes of adjustment would continue as before.[32] See *Order of Railway Telegraphers* v. *Railway Express Agency*, 321 U. S. 342, 348, in which this Court stated:

[32] It is, of course, difficult to show the non-existence of a procedure which, because it does not exist, is nowhere mentioned in discussions of the general subject. We believe on the basis of our inquiries within both the government and the industry that it was common knowledge in the railroad industry in 1934, as well as since, that unions handled grievances without obtaining or producing individual authorizations from the employees. That this was the practice is, we think, confirmed by (1) the fact that union members could appear before the earlier adjustment boards only through the organizations, as set forth in the historical development in the text. (2) the carrier members of the First Division of the Adjustment Board, in refusing, after the Court's decision was rendered, to participate in any cases until authorizations were filed, stated that they "do not understand that any dockets we have now before us have any such authorization", (3) the many writers who have described grievance procedures on the railroads and generally never adverted to any necessity for authorization. Attorney General's Committee on Administrative Procedure, *supra*, p. 20, n. 27. Wolf, *The Railroad Labor Board* (1927), 51-52; Hoxie, *Trade Unionism in the United States* (1923), 264-267, 271-272; Garrison, *The National Railroad Adjustment Board: A Unique Administrative Agency*, 46 Yale Law Journal 567, 577; Pierson, *Collective Bargaining Systems* (1942), 12-13, 21, 27-29; Lapp, *How to Handle Labor Grievances* (1945); Henig, *The Brotherhood of Railway Clerks* (1937), 115, *et seq.;* Sidney and Beatrice Webb, *Industrial Democracy* (1920), 182-184, 203-204, 233-237; Florence Peterson, *American*

> Collective bargaining was not defined by the statute which provided for it, but it generally has been considered to absorb and give statutory approval to the philosophy of bargaining as worked out in the labor movement in the United States. • • •

We have so far been dealing with the procedures before the adjustment boards because the statutes and the legislative history were chiefly concerned with that. Since no tenable distinction can be drawn between the right of the union to act as representative in grievance cases in negotiating with the carrier on the property and before an adjustment board, the evidence that the prior practice was not to be changed with respect to cases before the boards would extend to the prior negotiations as well. But we are not left to conjecture as to that. For Section 3 First (i) expressly provides that grievances shall first "be handled in the *usual manner* up to and including the chief operating

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Labor Unions (1945), 231-237; *Labor and the Government*, Daugherty, Taylor, and Dash, all *supra*, note 1, p. 3.

The issue here, of course, is not whether a court should take judicial notice in a particular case of this industry practice but whether it was within the contemplation of Congress when the Act was passed. The railroad men who drafted the Act, and to whom Congress looked for guidance, were, of course, much more familiar with industry practice than the courts. The courts have, however, taken judicial notice of "the general customs and usages of merchants" (*Brown* v. *Piper*, 91 U. S. 37, 42) and of "the general and established usages of trade" (*Gibson* v. *Stevens*, 8 How. 383, 398), including the customary methods of railroad operation. *Southern Railway* v. *United States*, 222 U. S. 20, 27 (intermingling of traffic and trains); *Rice and Lockwood Lumber Co.* v. *Boston and Maine R. Co.*, 308 Mass. 101 (1941) (deliveries of freight customarily made to industrial plants equipped with sidings); *Hilton* v. *Southern Ry. Co.*, 192 S. C. 476 (1940) (duties of conductors); *C. C. C. & St. L. Ry. Co.* v. *Jenkins*, 174 Ill. 398, 402 (1898) ("the manner in which ordinary railroad business is conducted"). The same principle should apply to commonly known customs in the new branch of the "law merchant", the relationship between employer and employee, as much as to the relationship between seller and purchaser. The important fact, of course, is whether the custom is known to all persons familiar with the industry, not whether it is personally known to the judges before being brought to their attention. *Quong Wing* v. *Kirkendall*, 223 U. S. 59, 63-64; *Shapleigh* v. *Mier*, 299 U. S. 468, 475.

officer of the carrier designated to handle such disputes''—language which was taken from the 1926 Act and the earlier agreements. The ''usual manner'' would seem to comprehend not only the presentation of the grievance to successively higher offices of the carrier[33] but other aspects of the procedure as well. And whether the phrase ''usual manner'' in and of itself specifically includes the manner of securing authorization, certainly it supports the conclusion that no change which would interfere with prior methods of settlement was anticipated. The usual manner of handling grievances had not been for the organizations to show express authority from the employees either on the property or before the adjustment boards, except possibly in cases in which the organization's authority was challenged by an employee or where an employee had acted through a different representative.

That grievances were to be handled through representatives in the usual manner also appears from Section 2 Sixth of the present Act (Section 2 Fourth in 1926). That paragraph provides that grievance cases shall be handled in conference between ''the designated representatives'' of the employees and the carriers. We do not read the quoted phrase as necessarily meaning the collective representative of the craft or class. But ''designated representative'' is an expression found with minor variations in form in other sections of the Act,[34] and in all its contexts is obviously primarily (see p. 17, *supra*)—even though perhaps not exclusively (see p. 8, *supra*)—intended to describe labor organizations designated by the employees in the manner

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[33] See the testimony of Mr. Richberg, Hearings before House Committee on Interstate and Foreign Commerce on H. R. 7180, 69th Cong., 1st sess., p. 67.

[34] See Section 2, Second, Third, and Tenth; cf. Section 6. Indeed, the term "representative" is defined in Section 1, Sixth as meaning a person or organization "designated" by the employees to act for them.

customary in the industry. In the past, membership in a labor organization had always been regarded as sufficient to warrant the organization's acting as a "designated representative" without more.

IV

THE EFFECT OF REQUIRING INDIVIDUAL AUTHORIZATIONS UPON EFFECTUATION OF THE PURPOSE OF THE RAILWAY LABOR ACT

The well-known objective of the Railway Labor Act is to facilitate the settlement of disputes which may interrupt interstate railway transportation. The Act is entitled "* * * An Act to provide for the prompt disposition of disputes between carriers and their employees." And the declaration of purposes in Section 2 of the 1934 Act specifically states that a purpose of the Act is "(5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions."

In so far as grievances are concerned, the discussion before the Congressional committees shows that although a single grievance case would seldom be of sufficient importance to bring on a strike, the accumulation of unsettled disputes might well do so.[35] We believe that the effect of imposing the novel requirement that a labor organization must possess agency authority from each employee for whom it acts in handling grievance will be seriously to impair the effectiveness of the present grievance machinery both on the properties and before the adjustment board.

As has been indicated under the current practice (prior to June of this year), labor organizations made no effort to get special authorizations from employees before repre-

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[35] See House Hearings, *supra*, p. 81; Senate Hearings, p. 33.

senting them in grievance cases. Furthermore, although there is great diversity in this respect, many of their Constitutions, general rules and by-laws contain no over-all grant of authority over the subject; indeed few of them are as specific as the general rules of the Brotherhood of Railroad Trainmen which the Court has held in this case to be insufficient to show such authority on its face.[36] And yet the various organizations have handled grievances in substantially the same way irrespective of the differences in their governing laws.

The result of last Term's decision has been and will be that a union's authority to settle a grievance involving a claim for accrued damages will always be subject to challenge by an individual who does not get all he wants, unless the union has previously obtained an exceedingly explicit power of attorney to act on his behalf. This means that the carriers will be likely to demand proof of such authorization from every individual involved before undertaking to negotiate a grievance case, since they might otherwise be liable to any employee dissatisfied with the settlement. As we shall see, this has been what has happened on the Adjustment Board.

In many simple cases, of course, it will not be difficult for the organization to secure an authorization. In other types of cases, although many authorizations could probably be obtained, it might be impossible to obtain authority from every individual involved. And whether or not impossible, the process of securing necessary authorizations might be so prolonged as to prevent prompt disposition even of the many cases which would in the past have been speedily settled on the properties. A few illustrations will make the point clear.

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[36] We have obtained and examined copies of the Constitution and by-laws of most of the railroad labor organizations. The copies are available to the Court if it wishes to examine them.

(a) Many grievances affect in the same way all persons performing the same kind of work, as in a dispute relating to starting time or overtime under an agreement. A union handling such a case customarily acts on behalf of all affected persons, including non-members, and both the union and the carrier normally recognize the necessity of disposing of the matter in the same way for all those similarly affected. Indeed, lack of uniformity in the determination of such a dispute would tend to undermine employee morale and lead to further difficulties. It is obviously desirable that in such situations the claims of all the affected employees be handled at the same time, either by way of a general claim on behalf of all persons affected or through a test case which by common understanding will control the others. These were the devices by which this problem was handled until last June. "The prompt and orderly settlement of all disputes" sought by the Act can hardly be achieved if such matters are to be disposed of *seriatim* with some individuals holding back their claims to see how their fellows make out first.

(b) A seniority dispute may involve the question whether a single individual should be placed near the head or near the foot of the seniority roster. The position of every person in between will be dependent upon the determination of that individual's position. Each of these persons may suffer financial loss if the individual particularly concerned is given too high a place. Just how many and which persons are actually injured will depend on various factors, such as the amount of work available each day, who is ill or on furlough on particular days, and the like.

(c) Another example, which we take from the brief filed on behalf of the experienced counsel for the Railway Labor Executives' Association and the American Federation of Labor (p. 30), would be a case in which a carrier assigned

work covered by its agreement with one craft (e. g. yard work) to another craft (e. g. road conductors):[37]

> • • • Under such circumstances, it is apparent that some one employee of the first craft was entitled to perform work but was denied that opportunity. The question is "Which one?" In any department of a railroad the number of employees in active service and the number on furlough varies from day to day. Under the facts stated, the senior furloughed employee in the craft whose agreement has been violated should have been in active service during each day of the period of violation. This, however, would not be the same individual during the whole period. It might well be that dozens of employees would occupy the position of No. 1 man on the furloughed list during this time and each would have a claim growing out of this one violation. The situation is complicated by the fact that the senior furloughed man on any given day might not be qualified to perform the duties in question and hence would have no valid claim, while the No. 2 man might be qualified. This fact must be considered. It might also be that the duties wrongfully assigned to the outside employee would actually have been performed by qualified workers of the craft whose agreement was violated and who were actually in service during the whole period, but performing less desirable jobs. These individuals, too, have claims. They in turn may well have displaced others junior in seniority to themselves who were as a result out of work entirely. Accordingly, it is entirely possible that the ramifications of a single simple violation of a collective bargaining agrement may be such that over a period of months substantially every employee in a large shop, office or station will have been adversely affected. • • •

A serious effect of the rule requiring express authority is that the rule itself will induce some persons who would

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[37] Cf. *Order of Railway Conductors* v. *Pitney*, No. 37 this Term.

ordinarily permit the organizations to handle their claims to refuse to do so. If a particular employee grants the union power of attorney, he will be bound to accept what the union obtains for him whether he likes it or not. If he refuses an authorization, he can wait and see what happens; if the union makes a satisfactory settlement, he is in practice bound eventually to get the benefit of it by subsequently pressing his claim. If he is not satisfied, he can bring an independent proceeding on his own behalf. He thus will be able to take advantage of the collective presentation of his claim and also have an additional opportunity to get what he wants. The jockeying for position which such a situation might entail would in itself prevent an orderly and satisfactory disposition of the dispute.

We believe that Congress did not intend the statute to be construed in a way which would impair the efficacy of the preexisting system for settling grievances through introducing a new element of delay and by establishing a requirement which in many important situations could not be met.

The requirement of express authority has already seriously affected the operations of the National Railway Adjustment Board. Immediately after the decision, the First and Third Divisions of the Board, which hear 94% of the cases brought before the four divisions,[38] ceased to operate. They subsequently recommenced operation on a limited scale when the organizations were able to obtain authorizations. The carrier members of the Board have taken the position, and we do not suggest unreasonably in the light of the decision, that no cases will be handled unless the dockets contained some legally sufficient authorization to the representative, a requirement not met by any of the cases on

[38] See National Mediation Board, Ninth Annual Report, pp. 54-60.

file.[39] A subsequent disagreement as to whether an authorization and evidence as to one employee warranted a finding in favor of another, who had submitted an authorization but as to whom there was no separate evidence, resulted in the Labor members of the First Division refusing to sit in any further cases until the Carrier members withdrew from their position.[40] This has closed down the First Division of the Board again. In this Division in the four months, July through October, 1945, 141 awards have been entered as contrasted with 483 in the preceding four months and 296 in the same months of 1944.[41] In the Third Division between June and November 20, 1945, 14 cases were decided on the merits as contrasted with 120 during the preceding five months.[42] Certificates of authorization have been filed in a number of cases, but in many of these the certificates could not be obtained from all of the employees affected. The chairman of this Division has informed us that "In many cases it was practically impossible, if not absolutely impossible, to determine fully just which employees were entitled to compensation under an award and order of

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[39] This information was submitted to the Solicitor General's Office by the Carrier members of the First Division and by the Chairman of the Third Division.

[40] The Labor members were of the view that to interpret this Court's decision as requiring authorizations and evidence for every person similarly situated with respect to a general or blanket claim, instead of following the prior practice of leaving a single award to be applied generally on the property, would so encumber the Division with a mass of cases as to make it impossible for it to function in a useful manner. The Carrier members maintain that there are a sufficient number of cases in which authorizations have been filed to permit the Division to function at the normal rate without inconvenience, and that it is not this Court's decision but the conduct of the Labor members which has prevented the Division from functioning.

[41] This information was submitted to the Solicitor General's Office by the Secretary and the Carrier members of the First Division.

[42] This information was submitted to the Solicitor General's Office by the Chairman of the Third Division.

the Board, until after the award was made, forwarded to the parties and they had set about to apply it." [43]

Apart from its affect upon future cases, the newly imposed requirement of express authority suggests the invalidity of all prior settlements and adjustment board awards in cases involving accrued claims. Since no such authorizations have ever been obtained, individual employees may sue independently of any such settlements or awards not entirely satisfactory to them if the practice in this case is followed.

The requirement of individual authorizations obstructs in another way the attainment of the statutory objective of reducing conflict in railroad labor relations. On the whole, a peaceful relationship is more likely to be achieved if the handling of grievances through labor organizations is facilitated and encouraged rather than the contrary. In the first place, since the parties negotiate on an equal basis only if the employees act collectively, the disposition of cases handled by a labor organization is likely to be fairer to the individual workers and to result in less subsequent dissatisfaction. Furthermore, when grievances are handled collectively, the disposition of them will be more consistent and uniform, which in itself will tend to remove a cause of future dispute. Finally, it is the customary practice when grievances are handled by labor organizations to have them first submitted to the local lodge members or officials.[44] After discussion and debate the meritorious cases are winnowed out for submission to the carriers. The indi-

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[43] The Second and Fourth Divisions of the Adjustment Board have so few cases that they are unable to estimate with any degree of accuracy the affect the requirement of authorizations will have on the number of cases handled.

[44] This appears from the labor union constitutions referred to at p. 27, *supra*, and also from the exerpt from the monograph of the Attorney General's Committee on Administrative Procedure quoted *supra*, p. 20. See also

vidual usually abides by the decision of his organization as to which cases should be pressed, whether he has to or not. This sifting process lessens the number of cases in dispute with the carrier and is in itself a valuable aid to industrial harmony.

These advantages of collective action in the disposition of grievances are attainable to a large extent even though the employees have a right to represent themselves if they wish. For the employees—or at least union members—normally recognize the superiority from their own individual standpoint of collective representation, and seek to act independently of the organization only in special circumstances where they have no confidence in the labor organization as their representative. The right of the individual to separate representation thus is a valuable but infrequently used safety valve available in exceptional cases. If the signing of an authorization or power of attorney is a necessary prerequisite to repre-

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the testimony of Vice President William Doak of the Brotherhood of Railroad Trainmen on the 1926 Act (Hearings before House Committee on Interstate and Foreign Commerce on H. R. 7180, 69th Cong. 1st sess., p. 203):

> * * * first of all, if a man has a grievance he must submit it to his local lodge and get the majority of the members present at that meeting employed on the division or district where he is employed to sanction it before it can be taken up by his local committee. That is the first thing. Secondly, it is referred to the local committee and they have a right to amend the grievance or handle it in any way they see fit and report back to the local lodge. The lodge can drop the case or it may be referred to the general committee, which general committee consists of the local chairmen from the respective divisions, who, with the officials of the railway, elect their own chairman.
>
> It can be handled by that general committee or thrown out as they see fit. Under this machinery, after it has gone through all this routine the case can go to the general manager, or the chief operating officer of the railroad, and with him conferences, be held and if the parties could not agree an appeal to the president, may be made, if it is wanted or, to the highest officer of that railroad before any of the machinery of this bill would be involved. Then if it was a grievance it would go to the adjustment board. * * *

sentation by the organization, some employees who would not affirmatively object to collective representation will not sign, out of inertia or a mere reluctance to commit themselves, as well as for other reasons. The effect of requiring express authority will be to shift the burden of positive action from the man who does not wish to be represented by the union, upon whom it has heretofore rested, to the man who does. We think that this change "in the usual manner" of handling grievances is not in accord with the statute's objectives or within the contemplation of Congress.

Another departure from the prior practice required by the present decision is its differentiation between those claims which relate to the past and those which concern the future. However familiar the distinction between a damage suit and an equity or injunction proceeding operating *in futuro* may be to a lawyer, it has never been regarded as significant in the resolution of labor disputes. In that field the line is an artificial one without relation to economic reality. Whether a grievance be handled by the organization or an individual, it will frequently involve a dispute as to what should be done and as to what has been done upon the same matter. A reasonable settlement will take both into account. As in the instant case, a carrier may abandon its contention as to the future in return for labor's abandonment of its claim as to the past. Such settlements made in good faith seem entirely reasonable and no barrier should be put in their way. They will be obstructed, however, if the organization may handle a controversy as to the future without restriction but may not touch the past phase of the same dispute without express authority. Since no such distinction had ever been drawn or suggested in the past, we do not think that Congress meant to embody it in the Railway Labor Act.

Conclusion

Our conclusion is that the history of the Act and of railway labor disputes in particular relation to grievance handling, the over-all scheme embodied in the statute, as well as the specific provisions, and the purpose of the Act all show that Congress intended the preexisting system for disposing of grievances to be used without any substantial modification pertinent here. See *Order of Railway Telegraphers* v. *Railway Express Agency*, 321 U. S. at 346. Under that system, the vast majority of the cases were handled by the labor organizations without express authority—and also without question by anyone. It was also permissible for the individual to handle his grievance through another or no representative if he saw fit. But unless he did so or otherwise gave some notice that he objected to representation by the labor organization holding the contract for the craft or class, it was assumed as a matter of course that the union was entitled to act for him. This procedure, particularly when coupled with the obligation to represent in good faith recognized in *Steele* v. *Louisville & N. R. Co.*, 323 U. S. 192, affords the individual or minority adequate protection without curtailing the effectiveness of the accepted and normal method of previously settling grievance cases. For these reasons, we believe that the Act should be read as manifesting a legislative intention that grievances continue to be handled in the usual manner, and that unless the carrier is in some way put on notice that the organization has no authority, settlements between the carrier and the organization are binding upon the individual employees.

The Court's opinion suggests that a different determination of the question as to the authority of the Brotherhood would require other points to be decided, including "the important issue concerning the finality and conclusive effect

of the award'' (Op. p. 29). It is our view that if in the circumstances it cannot be said that the union lacked authority to represent respondents, the settlement agreement of October 31, 1938, disposes of the controversy irrespective of the weight to be attached to the Adjustment Board award or its reviewability.

Respectfully submitted.

J. HOWARD MCGRATH,
Solicitor General.

ROBERT L. STERN,
Special Assistant to the Attorney General.

NOVEMBER 1945.

APPENDIX A

PERTINENT PROVISIONS IN THE 1920, 1926, AND 1934 RAILWAY LABOR STATUTES

1. Transportation Act of 1920, Title III, 41 Stat. 456, 469:

SEC. 302. Railroad Boards of Labor Adjustment may be established by agreement between any carrier, group of carriers, or the carriers as a whole, and any employees or subordinate officials of carriers, or organization or group of organizations thereof.

SEC. 303. Each such Adjustment Board shall, (1) upon the application of the chief executive of any carrier or organization of employees or subordinate officials whose members are directly interested in the dispute, (2) upon the written petition signed by not less than 100 unorganized employees or subordinate officials directly interested in the dispute, (3) upon the Adjustment Board's own motion, or (4) upon the request of the Labor Board whenever such board is of the opinion that the dispute is likely substantially to interrupt commerce, receive for hearing, and as soon as practicable and with due diligence decide, any dispute involving only grievances, rules, or working conditions, not decided as provided in section 301, between the carrier and its employees or subordinate officials, who are, or any organization thereof which is, in accordance with the provisions of section 302, represented upon any such Adjustment Board.

* * * * * * *

SEC. 307. (a) The Labor Board shall hear, and as soon as practicable and with due diligence decide, any dispute involving grievances, rules, or working conditions, in respect to which any Adjustment Board certifies to the Labor Board that in its opinion the Adjustment Board has failed or will fail to reach a decision within a reasonable time, or in respect to which the Labor Board determines that any Adjustment Board

has so failed or is not using due diligence in its consideration thereof. In case the appropriate Adjustment Board is not organized under the provisions of section 302, the Labor Board, (1) upon the application of the chief executive of any carrier or organization of employees or subordinate officials whose members are directly interested in the dispute, (2) upon written petition signed by not less than 100 unorganized employees or subordinate officials directly interested in the dispute, or (3) upon the Labor Board's own motion if it is of the opinion that the dispute is likely substantially to interrupt commerce, shall receive for hearing, and as soon as practicable and with due diligence decide, any dispute involving grievances, rules, or working conditions which is not decided as provided in section 301 and which such Adjustment Board would be required to receive for hearing and decision under the provisions of section 303.

(b) The Labor Board, (1) upon the application of the chief executive of any carrier or organization of employees or subordinate officials whose members are directly interested in the dispute, (2) upon a written petition signed by not less than 100 unorganized employees or subordinate officials directly interested in the dispute, or (3) upon the Labor Board's own motion if it is of the opinion that the dispute is likely substantially to interrupt commerce, shall receive for hearing, and as soon as practicable and with due diligence decide, all disputes with respect to the wages or salaries of employees or subordinate officials of carriers, not decided as provided in section 301. The Labor Board may upon its own motion within 10 days after the decision, in accordance with the provisions of section 301, of any dispute with respect to wages or salaries of employees or subordinate officials of carriers, suspend the operation of such decision if the Labor Board is of the opinion that the decision involves such an increase in wages or salaries as will be likely to necessitate a substantial readjustment of the rates of any carrier. The Labor Board shall hear any decision so suspended,

and as soon as practicable and with due diligence decide to affirm or modify such suspended decision.

* * * * * * *

2. Railway Labor Act of 1926, 44 Stat. 577.

GENERAL DUTIES

SEC. 2. First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

Second. All disputes between a carrier and its employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carriers and by the employees thereof interested in the dispute.

Third. Representatives, for the purposes of this Act, shall be designated by the respective parties in such manner as may be provided in their corporate organization or unincorporated association, or by other means of collective action, without interference, influence, or coercion exercised by either party over the self-organization or designation of representatives by the other.

Fourth. In case of a dispute between a carrier and its employees, arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, it shall be the duty of the designated representative or representatives of such carrier and of such employees, within ten days after the receipt of notice of a desire on the part of either party to confer in respect to such dispute, to specify a time and place at which such con-

ference shall be held: *Provided,* (1) That the place so specified shall be situated upon the railroad line of the carrier involved unless otherwise mutually agreed upon; and (2) that the time so specified shall allow the designated conferees reasonable opportunity to reach such place of conference, but shall not exceed twenty days from the receipt of such notice: *And provided further,* That nothing in this paragraph shall be construed to supersede the provisions of any agreement (as to conferences) then in effect between the parties.

Fifth. Disputes concerning changes in rates of pay, rules or working conditions shall be dealt with as provided in section 6 and in other provisions of this Act relating thereto.

BOARDS OF ADJUSTMENT—GRIEVANCES—INTERPRETATION OF AGREEMENTS

SEC. 3. First. Boards of adjustment shall be created by agreement between any carrier or group of carriers, or the carriers as a whole, and its or their employees.

The agreement—

(a) Shall be in writing;

(b) Shall state the group or groups of employees covered by such adjustment board;

(c) Shall provide that disputes between an employee or group of employees and a carrier, growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, that the dispute shall be referred to the designated adjustment board by the parties, or by either party, with a full statement of the facts and all supporting data bearing upon the dispute;

(d) Shall provide that the parties may be heard either in person, by counsel, or by other representative, as they may respectively elect, and that adjustment boards shall hear and, if possible, decide promptly all disputes referred to them as provided in paragraph (c). Adjustment boards shall give due notice of all hearings to the employee or employees and the carrier or carriers involved in the dispute;

(e) Shall stipulate that decisions of adjustment boards shall be final and binding on both parties to the dispute; and it shall be the duty of both to abide by such decisions;

(f) Shall state the number of representatives of the employees and the number of representatives of the carrier or carriers on the adjustment board, which number of representatives, respectively, shall be equal;

(g) Shall provide for the method of selecting members and filling vacancies;

(h) Shall provide for the portion of expenses to be assumed by the respective parties;

(i) Shall stipulate that a majority of the adjustment board members shall be competent to make an award, unless otherwise mutually agreed;

(j) Shall stipulate that adjustment boards shall meet regularly at such times and places as designated; and

(k) Shall provide for the method of advising the employees and carrier or carriers of the decisions of the board.

Second. Nothing in this Act shall be construed to prohibit an individual carrier and its employees from agreeing upon the settlement of disputes through such machinery of contract and adjustment as they may mutually establish.

3. Railway Labor Act of 1934, 48 Stat. 1185.

GENERAL PURPOSES

SEC. 2. The purposes of the Act are: (1) to avoid any interruption to commerce or to the operation of any carrier engaged therein; (2) to forbid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization; (3) to provide for the complete independence of carriers and of employees in the matter of self-organization to carry out the purposes of this Act; (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions.

GENERAL DUTIES

First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

Second. All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute.

* * * * * * *

Fourth. Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class

of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act. No carrier, its officers or agents, shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees, or to use the funds of the carrier in maintaining or assisting or contributing to any labor organization, labor representative, or other agency of collective bargaining, or in performing any work therefor, or to influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any labor organization, or to deduct from the wages of employees any dues, fees, assessments, or other contributions payable to labor organizations, or to collect or to assist in the collection of any such dues, fees, assessments, or other contributions: *Provided,* That nothing in this Act shall be construed to prohibit a carrier from permitting an employee, individually, or local representatives of employees from conferring with management during working hours without loss of time, or to prohibit a carrier from furnishing free transportation to its employees while engaged in the business of a labor organization.

* * * * *

Sixth. In the case of a dispute between a carrier or carriers and its or their employees, arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, it shall be the duty of the designated representative or representatives of such carrier or carriers and of such employees, within ten days after the receipt of notice of a desire on the part of either party to confer in respect to such dispute, to specify a time and place at which such conference shall be held: *Provided,* (1) That the place so specified shall be situated upon the line of the carrier involved or as otherwise mutually agreed upon; and (2) that the time so

specified shall allow the designated conferees reasonable opportunity to reach such place of conference, but shall not exceed twenty days from the receipt of such notice: *And provided further,* That nothing in this Act shall be construed to supersede the provisions of any agreement (as to conferences) then in effect between the parties.

* * * * *

Sec. 3. First. * * *

* * * * * * *

(i) The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes.

(j) Parties may be heard either in person, by counsel, or by other representatives, as they may respectively elect, and the several divisions of the Adjustment Board shall give due notice of all hearings to the employee or employees and the carrier or carriers involved in any disputes submitted to them.

* * * * *

Sec. 6. Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, and the time and place for the beginning of conference between the representatives of the parties interested in such in-

tended changes shall be agreed upon within ten days after the receipt of said notice, and said time shall be within the thirty days provided in the notice. In every case where such notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Mediation Board have been requested by either party, or said Board has proffered its services, rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon as required by section 5 of this Act, by the Mediation Board, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board.

APPENDIX B

Findings and rulings of the District Court in *General Committee* v. *Southern Pacific Co.*, 320 U. S. 338, October Term 1943, Nos. 27, 41, the National Mediation Board, and an emergency board on the handling of grievances:

1. In the *Matter of Delaware, Lackawanna & Western R. Co.*, Nos. M-199 and R. 358, decided August 13, 1937, the Mediation Board declared (p. 7):

> After the majority representatives made the agreement for the craft or class, individual employees were given the right to select their representatives for dealing with grievances arising under the agreements and such individual grievances were to [be] adjudicated by the National Railroad Adjustment Board, which was given the authority to interpret the agreements made and apply the interpretation to the individual grievances of employees.

2. From Transcript of Record, Supreme Court, October Term, 1943, No. 27, *General Committee* v. *Southern Pacific Company.*

a. Findings of Fact of Judge Louderback (R. 48-50):

7. (a) In the operation of Pacific Lines, there arise individual claims and grievance cases, involving dis-

putes between individual employees and defendant as to their respective rights under the agreements referred to in paragraph 5 and as to matters not covered by said agreements. It is and ever since long prior to the enactment of the Railway Labor Act has been the custom for an engineman who has an individual claim arising out of any such dispute, and who desires the Firemen's or Engineers' Brotherhood (or other representative) to represent him in presenting and handling to conclusion the claim against defendant, to select whichever brotherhood (or other representative) he desires. In such cases a claimant engineman is not and never has been required to choose as his representative the brotherhood or labor organization selected as a representative for collective bargaining by the majority of employees in the service in which the claimant was employed when the dispute arose.

(b) The usual manner of handling such individual claims is and since long prior to the enactment of the Railway Labor Act continuously has been for the claimant to select as his representative the brotherhood of which he is a member, regardless of the craft or class in which he was employed when the dispute arose. In a limited number of cases, the claimant presents or has presented his claim to defendant directly and without representation, or he selects or has selected another organization or individual to represent him. Such presentation and handling to conclusion of a claim by the individual directly concerned, or a representative other than the brotherhood to which claimant belongs, is within the scope and meaning of the "usual manner of handling." When a claim, after initial presentation to defendant, is handled further with defendant's officers, or subsequently presented to the National Railroad Adjustment Board, it is usually handled by the same brotherhood (or other representative selected by the claimant) as presented *the* the claim to defendant.

(c) On almost every railroad in the United States, all individual claims, grievances and disputes of enginemen against their employers, whether within the

scope of a collective bargaining agreement or not, and whether involving rights arising from such agreement or not, are and from a date long prior to the passage of the Railway Labor Act have been handled in the manner hereinabove set forth as applicable to defendant's Pacific Lines, and such was at all said time and is now the usual manner of handling such claims.

b. Letter from Member Carmalt of the National Mediation Board (R. 216, 217-218):

Subsequent to the abrogation of the Chicago Joint Agreement, effort was made by the B. of L. E. to have the contracts on many railroads so amended as to give to the General Adjustment Committee of the Engineers the exclusive right to represent engineers in disputes with management. This contention, as well as that of the two cases heretofore cited, ignores entirely the provision of the Chicago Joint Agreement in which it was conceded that the jurisdiction of the B. of L. E. extended over the craft of engineers, and that of the B. of L. F. & E. over the employees engaged as firemen, hostlers and hostler helpers, with the further proviso that the members of each Organization had the right to call in the Committee of their own Organization to represent them in grievance cases but under the interpretation of the contract made by the Organization which held the contract. On only one Class I Railroad did the engineers succeed in getting the exclusive right of representation. The policy of the B. of L. E. in this regard is not only in violation of the Chicago Joint Agreement but is also in violation of the amended Railway Labor Act, as will be discussed later.

* * * * * * *

The National Mediation Board is compelled to view as a matter of law that the supplemental contract effective October 17, 1928, with the B. of L. E. is absolutely illegal, since the Company interprets it to

give to the engineers' committee a right to represent any employee who desires another representation. No contract between a railroad employer and an organization of employees can give to that organization any right to represent an individual employee unless the employee himself assents. * * *

c. Letter from Chairman Leiserson of the National Mediation Board (R. 230-231):

As the Board understands the facts they are:

(1) The case involves grievances of six engineers who have been disciplined or discharged and who desire to discuss their grievances with the General Superintendent.

(2) The men are members of the Brotherhood of Locomotive Firemen and Enginemen.

(3) They desire to be represented, in conferring with the General Superintendent, by the Vice President of this Brotherhood, who is not an employee of the Florida East Coast Railroad.

(4) The contract covering the engineers is with the Brotherhood of Locomotive Engineers.

(R. 234-235):

The question resolves itself, therefore, down to the problem whether a labor organization to which the engineers belong, but which does not hold the contract covering all the engineers, may, in cases of individual grievances, be designated by the aggrieved employees to represent them in conferences with the management.

The Board finds that it has been a common practice on the railroads generally to handle cases of individual grievances on appeal to higher officials in conferences between such officials and officers of labor organizations regardless of whether these were employees of the carriers or not; and that it has been quite common

for officers of employees' organizations to represent aggrieved employees in such conferences with higher officials even though these organizations did not happen to hold the contracts covering the class of such employees.

In view of this common practice, the Board is of the opinion that in conferences between carriers and employees to consider grievances of employees who have already been disciplined and have carried their cases to higher operating officials, the "usual manner" of handling such cases has been to permit aggrieved employees to designate representatives for such conferences without regard to whether the representatives were employees of the carrier or not, or whether they were officers of an organization which held a contract or not.

The Board therefore holds that the management is required both by Section 2, Second, and Section 3 (i) of the Railway Labor Act, as amended, to confer with the representative of the Brotherhood of Locomotive Firemen and Enginemen whom the six engineers designated as their representative for handling their grievances.

By order of the National Mediation Board.

WM. M. LEISERSON,
Chairman.

d. Excerpt from report of an Emergency Board under the Railway Labor Act (R. 738)—

In the present case, the Carrier, in making the agreement of February 27, 1936, offended not only against the plain intent of the law, but broke its specific agreement with the Brotherhood of Locomotive Firemen and Enginemen, several times reaffirmed, that any engineer member of the latter Organization can have the regularly constituted committee of his Organization represent him in the handling of grievances. There was no restriction in the Firemen's Agreement upon this right. The interpretations of rules were to be made in accordance with the recognized interpretation

agreed upon between the Carrier and the Organization holding the contract, but there was no limitation upon the right of an engineer member of the Brotherhood of Locomotive Firemen and Enginemen to have the committee of his Organization represent him in handling the case, under the recognized interpretation of the rule applying to his case.

(R. 742-743):

We find that—

(1) As interpreted by officers of the Brotherhood of Locomotive Engineers, and certain officers of the Southern Pacific Company, Pacific Lines, the Agreement of February 27, 1936, entered into between the Carrier and the officers of this Organization, has adversely affected rights of the Brotherhood of Locomotive Firemen and Enginemen secured to them by their Agreement with the Carrier in Article 51, Section 1, of the Firemen's Agreement of May 1929, and secured to them by the Railway Labor Act.

(2) The Agreement of February 27, 1936, should, therefore, be cancelled.

(3) The evidence presented in this case indicates clearly that this can be done without adversely affecting the just interests of the parties to the Agreement:

(a) If in conformity with its own understanding of the recognized or agreed upon interpretation of the rule involved, the Carrier promptly makes its awards on claims for adjustment of grievances brought to it by representatives of the persons making the claims.

(b) If the Carrier promptly furnishes copies of its awards to officers of Organizations having an interest in them, either because they hold an Agreement with the Carrier, a rule of which is being applied, or because they represent the party making the claim as a member of their Organization.

(c) If in the event claims are compromised, this fact is clearly noted and as a matter of standard practice, it

is stated that compromised awards are made without prejudice to the rule of the working agreement in question.

(d) If the Organization holding the Agreement avails itself of existing remedies to correct any misinterpretation of its rules involved in a settlement made by the Carrier.

APPENDIX C

STATEMENTS ON GRIEVANCES CONTEMPORANEOUS WITH THE PASSAGE OF RAILWAY LABOR ACT OF 1934

In the spring of 1934 Senator Wagner introduced the forerunner of the National Labor Relations Act (S. 2926, 73d Cong., 2d Sess.). The bill, as reported out of the Senate Committee, contained a provision for majority rule when the Board so decided, with the proviso that "nothing in this Act shall be construed to prohibit an employer from discussing grievances with an employee or groups of employees at any time." (Sec. 10 (a)). The Senate Committee report (No. 1184, p. 8) stated in respect to this provision:

> Although the representatives of the majority may make the agreement for that unit, the minority have a right *through representatives or otherwise* to present grievances to their employer. [Italics supplied.]

This report was submitted on May 26, 1934.[1]

The proposed bill was not passed. In its stead Congress enacted Public Resolution No. 44 (48 Stat. 1183) which authorized the President to establish boards to decide controversies under Section 7 (a). The resolution was approved by the President on June 19, 1934, two days before he approved the Railway Labor Act amendments. The text of the Resolution throws no light upon the problem; but on June 28, a week after he signed the Railway Labor Act, the

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[1] The committee reports on the Railway Labor Act (S. Rep. 1065, H. Rep. 1944, 73d Cong., 2d Sess.) were submitted on May 21 and June 11, 1934, respectively.

President created the National Steel Labor Relations Board (Executive Order 6751). Section 3 of this Order authorized the Board to hold elections to determine representation, and then provided—

> • • • After each such election the Board shall certify the results to all concerned, and the person, persons, or organization certified as the choice of the majority of those voting shall be accepted as the representative or representatives of said employees for the purpose of collective bargaining, *without thereby denying to any individual employee or group of employees the right to present grievances,* to confer with their employers, *or otherwise to associate themselves and act for mutual aid or protection.* [Italics supplied.]

Executive Order No. 6858, September 26, 1934, creating the Textile Labor Relations Board, contained identical language. See to the same effect the order of the Administrator of the Petroleum Code, dated March 8, 1935, defining the functions of the Petroleum Labor Policy Board (printed in United States Department of the Interior, *Decisions of the Petroleum Labor Policy Board,* pp. ix-x).

The Order establishing the first National Labor Relations Board,[2] issued on June 29, 1934, contained no such provision (Executive Order No. 6763). But in its leading decision on the question of majority rule, *In the Matter of Houde Engineering Corp.,* National Labor Relations Board Decisions, July 19, 1934—June 16, 1935, p. 35, decided August 30, 1934, the Labor Relations Board relied upon and quoted Principle 15 of the old Railroad Labor Board, and also referred to the Railway Labor Act Amendments passed shortly before. The Board also approved the limitation upon the doctrine as set forth in the Executive Order creating the Steel Labor Board. The Board stated in this connection (*ibid.*):

> In concluding this opinion the Board wishes to indicate the limits beyond which it does not go. The rule

[2] This Board was the predecessor to the present Board.

here announced is to be applied, in the language of the Executive Order of June 28 just referred to, "without denying to any employee or groups of employees the right to present grievances, to confer with their employers, or to associate themselves and act for mutual aid or protection."

The same principles were applied by the Petroleum Labor Policy Board created by the Administrator of the Petroleum Code; its concluding report to the Petroleum Administrator stated:[3]

> * * * the principle was laid down that a majority of any craft or class of employees shall have the right to determine who shall be the representative of that class or craft for collective bargaining. While developing this principle, at the same time the Board has recognized the rights of individuals or groups to represent themselves or be represented by counsel or other representatives in cases of grievances or other matters not affecting the collective bargain for the whole class or craft of employees.

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[3] See United States Department of the Interior, Petroleum Labor Policy Board, *Report to the Petroleum Administrator*, dated August 17, 1935 (mimeographed).

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SUPREME COURT OF THE UNITED STATES.

No. 160.—October Term, 1944.

Elgin, Joliet and Eastern Railway Company, Petitioner, *vs.* G. W. Burley, et al.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

[March 25, 1946.]

Mr. Justice Rutledge delivered the opinion of the Court.

We adhere to our decision rendered in the opinion filed after the first argument. 325 U. S. 711.[1] That opinion expressly refrained from undertaking to make a definitive statement of what might be sufficient evidence of the collective agent's authority either to settle finally the aggrieved individual employee's claims or to represent him exclusively before the Adjustment Board. We do not attempt to do so now. For whether the collective agent has such authority is a question which may arise in many types of situations involving the grievances either of members of the union or of nonmembers, or both, and necessarily therefore no all-inclusive rule can be formulated for all such situations. But neither does this mean that an equally all-exclusive rule must be followed, namely, that authority can be given or shown only in some particular way.

The question whether the collective agent has authority, in the two pertinent respects, does not turn on technical agency rules such as apply in the simple, individualistic situation where P deals with T through A about the sale of Blackacre. We are dealing here with problems in a specialized field, with a long background of custom and practice in the railroad world. And the fact that § 3 First (i) provides that disputes between car-

[1] The petition for rehearing, which resulted in setting the case for reargument, was supported by motions filed amicus curiae by various labor organizations and by the office of the Solicitor General. Upon granting of the motions, those organizations and the Solicitor General filed briefs amicus curiae and the latter participated in the argument. Various positions were taken upon the merits which we have considered but do not find it necessary to set forth.

riers and their employees arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions "shall be handled in the usual manner" up to and including the chief operating officer of the carrier, indicates that custom and usage may be as adequate a basis of authority as a more formal authorization for the union, which receives a grievance from an employee for handling, to represent him in settling it or in proceedings before the Board for its determination.[2]

Moreover, when an award of the Adjustment Board involving an employee's individual grievance is challenged in the courts, one who would upset it carries the burden of showing that it was wrong.[3] Its action in adjusting an individual employee's grievance at the instance of the collective bargaining agent is entitled to presumptive weight. For, in the first place, there can be no presumption either that the union submitting the dispute would undertake to usurp the aggrieved employee's right to participate in the proceedings by other representation of his own choice, or that the Board knowingly would act in disregard or violation of that right. Its duty, and the union's, are to the contrary under the Act.[4]

Furthermore, the Board is acquainted with established procedures, customs and usages in the railway labor world. It is the specialized agency selected to adjust these controversies. Its expertize is adapted not only to interpreting a collective bargaining

[2] Furthermore, so far as union members are concerned, and they are the only persons involved as respondents in this cause, it is altogether possible for the union to secure authority in these respects within well established rules relating to unincorporated organizations and their relations with their members, by appropriate provisions in their by-laws, constitution or other governing regulations, as well as by usage or custom. There was nothing to the contrary in our former opinion. We only ruled that on the showing made in this respect, which included controverted issues concerning the meaning and applicability of the union's regulations, and the effects of custom and usage, we could not say as a matter of law that the disputed authority had been given.

[3] In a somewhat different connection, which however we think not without weight here, § 3 First (p) provides that the Board's award "shall be prima facie evidence of the facts therein stated" in the statutory suit provided for enforcement of awards.

[4] The contrary practice noted in our former opinion, 325 U. S. 732-733, has been due without question, we think, to the Board's erroneous conception, accepted generally also by the unions and strongly urged in this case especially upon the reargument, that the Act itself, notwithstanding the provisions particularly of § 3 First (j) and the proviso to § 2, Fourth, confers exclusive statutory power upon the collective agent to deal with the carrier concerning individual grievances and to represent the aggrieved employee in Board proceedings.

agreement,[5] but also to ascertaining the scope of the collective agent's authority beyond what the Act itself confers, in view of the extent to which this also may be affected by custom and usage.

We also pointed out that the Act imposes correlative affirmative duties upon the carrier, the collective agent and the aggrieved employee to make every reasonable effort to settle the dispute.[6] It would be entirely inconsistent for the Act to require the carrier and the union to negotiate concerning the settlement of the grievance and, while withholding power from them to make that settlement effective finally as against the employee, to relieve him altogether of obligation in the matter. Not only is he required to take affirmative steps. His failure to do so may result in loss of his rights.[7]

It is not likely that workingmen having grievances will be ignorant in many cases either of negotiations conducted between the collective agent and the carrier for their settlement or of the fact that the dispute has been submitted by one or the other to the Adjustment Board for determination. Those negotiations, as the Act requires, are conducted on the property. § 2 Sixth. Ordinarily submissions are not and the statute contemplates that they shall not be, made to the Board until after all reasonable efforts to reach an agreement have been exhausted in good faith.[8]

In view of these facts there cannot be many instances in which an aggrieved employee will not have knowledge or notice that

[5] We recently emphasized this in Order of Railway Conductors *v.* Pitney, No. 37, October Term 1945, decided January 14, 1946, in which we said: "Since all parties seek to support their particular interpretation of these agreements by evidence as to usage, practice and custom that, too, must be taken into account and properly understood. The factual question is intricate and technical. An agency specially competent and specifically designated to deal with it has been created by Congress."

[6] See 325 U. S. 711 at notes 12, 18 and text. We said: "The obligation [to negotiate] is not partial. In plain terms the duty is laid on the carrier and employees alike, together with their representatives; and in equally plain terms it applies to all disputes covered by the Act, whether major or minor." Note 18. Cf. Virginian Ry. Co. *v.* System Federation, 300 U. S. 515, 548; Trainmen *v.* Toledo, P. & W. R. Co., 321 U. S. 50, 57 ff.

[7] Even the ordinary law of agency attributes authority to a representative to act when the principal stands by with knowledge or notice of his assumption of that authority and permits the third person to act to his injury upon the same assumption. Cf. Seavey, The Rationale of Agency (1920) 29 Yale L. J. 859, 873 *et seq.*; and other authorities cited in Mechem, Cases on the Law of Agency (3d ed.) 186, note. And of course the assumption that even so-called common law rules of agency allow no room for the play of usage and custom is, to say the least, naive.

[8] Cf. note 6 and authorities cited.

negotiations affecting his claim are being conducted or, if they fail, that proceedings are pending before the Board to dispose of it.[9] Although under our ruling his rights to have voice in the settlement are preserved, whether by conferring with the carrier and, having seasonably done so, refusing to be bound by a settlement reached over his protest, or by having representation before the Board according to his own choice, we did not rule, and there is no basis for assuming we did, that an employee can stand by with knowledge or notice of what is going on with reference to his claim, either between the carrier and the union on the property, or before the Board on their submission, allow matters to be thrashed out to a conclusion by one method or the other, and then come in for the first time to assert his individual rights. No such ruling was necessary for their preservation and none was intended.

It may be, as we said previously, that respondents upon the further hearing will find it difficult to sustain their allegations, whether with reference to knowledge or notice in the material respects concerning which they have denied having it or otherwise. But whether this burden will be easy or impossible to carry, they are entitled to undertake it in the forum where such issues properly are triable.

The judgment is affirmed and the cause is remanded for further proceedings consistent with this opinion and the previous opinion filed in this cause.

Mr. Justice JACKSON took no part in the consideration or decision of this case on the reargument.

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[9] We pointed out in the former opinion that § 3 First (j) expressly provides that "the several divisions of the Adjustment Board shall give due notice of all hearings *to the employee* or employees and the carrier or carriers involved in any dispute submitted to them," 325 U. S. at 731, 734, and this provision, with the emphasis we placed upon the phrase "to the employee" and the conjunction of the provision for "due notice" with the provision for representation "in person, by counsel, or by other representatives," was one of the statutory mainstays for our conclusion that the Act did not give the collective agent the exclusive powers over the settlement of grievances claimed for it.

But we did not undertake to define what was meant by "due notice," nor do we now. "Due notice" conceivably could be given or had in a variety of forms, more especially when account is taken of the generally informal procedure of the Board. It would require at the least, we think, knowledge on the aggrieved employee's part of the pendency of the proceedings or knowledge of such facts as would be sufficient to put him on notice of their pendency.

SUPREME COURT OF THE UNITED STATES.

No. 160.—October Term, 1944.

Elgin, Joliet and Eastern Railway Company, Petitioner, *vs.* G. W. Burley, et al.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

[March 25, 1946.]

Mr. Justice Frankfurter dissenting.

The Chief Justice, Mr. Justice Burton, and I are of opinion that the judgment should be reversed. Last Term a divided Court held that a determination by the Adjustment Board of a dispute brought before it by a union recognized as the collective bargaining agent on behalf of its members is not binding, and may be upset in a district court in an independent suit involving the construction of the collective agreement, but brought by an individual member on his own behalf. 325 U. S. 711. The dissent expressed the view that "to allow such settlements to be thus set aside is to obstruct the smooth working of the Act. It undermines the confidence so indispensable to adjustment by negotiation which is the vital object of the Act." *Id.* at 755-56.

The Court now announces that it "adheres" to its decision. But as we read the Court's interpretation of its original opinion, it "adheres" to it by extracting from it almost all of its vitality. We say "almost" because the one thing that remains is the conclusion that the determination by the Adjustment Board that the recognized union represented its members is allowed to be reopened not before the Board but anew in the courts, State or federal, in an independent suit by a member of the union against the carrier. To be sure, the prospects for redetermination are largely illusory because the Court now erects a series of hurdles which will be, and we assume were intended to be, almost impossible for an employee to clear. But since litigation is authorized and hope springs eternal in a litigant's breast, the far-reaching mischief of unsettling nonlitigious modes of adjustment under the machinery of the Railway Labor Act largely remains. When peaceful settle-

ments between carriers and the Brotherhoods are subject to such hazards, the carrier can hardly be expected to negotiate with a union whose authority is subject to constant challenge. It was this dislocation of settled habits in adjusting railroad labor relations which evoked a series of petitions for rehearing from the United States, the Brotherhoods, the Railway Labor Executives' Association, and the organizations of industrial and craft unions. All the interests primarily concerned and best informed on these matters were aroused because for them the opinion destroyed the capacity of the Railway Labor Act to fulfill its function, ignored the normal practices of the industry, and impaired the rights of collective bargaining generally. Because of this unsettling effect, not abated by the present decision's adherence to the prior by adding new complexities—complexities so inimical to healthy relations on the railroads—we deem it appropriate to add to what was said in the original dissent. 325 U. S. 711, 749.

That these mischiefs are real and potent is attested by the arguments presented by the *amici curiae*. The United States points out:

> "The result of last Term's decision has been and will be that a union's authority to settle a grievance involving a claim for accrued damages will always be subject to challenge by an individual who does not get all he wants, unless the union has previously obtained an exceedingly explicit power of attorney to act on his behalf. This means that the carriers will be likely to demand proof of such authorization from every individual involved before undertaking to negotiate a grievance case, since they might otherwise be liable to any employee dissatisfied with the settlement. As we shall see, this has been what has happened on the Adjustment Board.
>
> In many simple cases, of course, it will not be difficult for the organization to secure an authorization. In other types of cases, although many authorizations could probably be obtained, it might be impossible to obtain authority from every individual involved. And whether or not impossible, the process of securing necessary authorizations might be so prolonged as to prevent prompt disposition even of the many cases which would in the past have been speedily settled on the properties."

The Brotherhoods of Locomotive Engineers and of Railroad Trainmen thus summarize the effect of the Court's decision:

> "The impact of the Court's decision on the processes of grievance adjustment has already appeared in the suspension of the function of the National Railroad Adjustment

Board and in indicated difficulties on various railroad properties. It is our conviction that unless this decision be reversed or substantially modified, the prompt and orderly settlement of such disputes will be impeded to a serious degree. The holding upsets long established techniques of grievance handling by employee representatives and adversely affects the administration and enforcement of the collective agreements.

We point out, first, that the Court's decision construes the Railway Labor Act in a way which frustrates the purposes which Congress had in mind in providing for the settlement of grievance disputes."

"The shutting down of the Adjustment Board because of the difficulty or the impossibility of securing authorizations is only one development of the decision. We are advised that some managements are insisting that local chairmen furnish powers of attorney in day to day adjustments. Considering the various factors involved such as the volume of the grievances, the extra burden placed on the committees, and the additional delays which would be encountered, the task of compliance with the technique required by the Court's decision seems calculated to cause a breakdown of grievance handling by employee representatives. It is obvious that handling by individuals or on an individual basis will not work. Such a breakdown, or even the impairment of collective handling as traditionally practiced, will be serious, as prior history shows."

"Second, the decision impairs the functioning of employee representatives under the Act, and has an adverse effect upon the maintenance of craft agreements. Representatives of employees have the statutory right and duty (1) to confer with management respecting *all* disputes (§ 2 Second) and specifically those arising out of grievances or out of the interpretation or application of agreements (§ 2 Sixth); and (2) to represent a craft or class for the purposes of the Act (§ 2 Fourth). The latter, of course, includes the right to negotiate craft agreements. Employees, acting through representatives, have the right to make and maintain agreements and to settle *all* disputes (§ 2 Fourth, § 1 First). These provisions, we believe, spell out collective bargaining rights with which the Court's decision interferes."

The Railroad Labor Executives' Association and the American Federation of Labor make this analysis:

"In summary, therefore, we submit that the regulatory scheme of the Railway Labor Act requires for its effective operation a recognized authority in the collective bargaining

representative to proceed in its own right to adjust disputes regarding the interpretation or application of agreements. A denial of that right will produce no real benefits to individual employees, will impair the effectiveness of representatives as stabilizing influences in this field, will deprive the carriers of any agency to which they may go to secure a final settlement of many vexatious labor controversies and will bring about a general deterioration of relations between employees and management which will necessarily impair the paramount interest of the public in uninterrupted transportation.

We respectfully submit that these results already experienced or reasonably to be anticipated from the interpretation which has been given to the Railway Labor Act are inimical to the whole purpose of the statute and should not be maintained."

"The decision of the court in effect outlaws a method which has been successfully followed for a quarter of a century in the adjustment of disputes of the kind under consideration. Thousands of individual cases have been settled during this period and up to the time of the decision in this case, no one has questioned the authority of the employees' representatives to act in this connection. The existence of such authority has always been considered as an integral and essential part of the collective bargaining process as it has developed under federal regulation. We have no hesitancy in saying to the court that we believe that its decision denying the existence of such authority reduces the potency of collective bargaining as an instrumentality of peace in the railroad industry to a lower level than that prevailing in 1920. We feel that the court should be advised that since the announcement of its decision the National Railroad Adjustment Board has virtually ceased to function. . . . This brief is filed with the deep conviction that the whole process of the orderly adjustment of controversies, which is the fruit of railroad labor legislation obtained after long effort on the part of all concerned, is now in serious jeopardy. The potentialities of this case were not fully recognized by us when it was originally before the court.

The Brotherhood of Locomotive Firemen and Enginemen, the Order of Railway Conductors of America, and Switchmen's Union of North America united in this statement:

"We are compelled to conclude from this treatment of the problem that the Court proposes to apply a commonlaw standard, designedly suitable to the relatively simple relationship of principal and agent, as the test of the authority of a railway labor organization to handle and settle the host

of grievances which must be expeditiously and effectively disposed of if the Congressional enjoinment 'to avoid any interruption to commerce or to the operation of any carrier engaged therein' is to be accomplished.

We wish respectfully to suggest to the Court that the entertainment of this proposed view could be commended as reasonable only if the problem under consideration were weighed wholly detached from the realities of its environment. If a strait-jacket of legal restrictions is not to shackle the railway labor organizations in the performance of the services expected of them by the Congress and the country at large as outlined in the Railway Labor Act, the mind of the Court must be accurately attuned to the practicalities of the problems faced by those representatives."

To these the Congress of Industrial Organization on its own behalf and for its constituent unions[1] adds:

"The Court holds that such *union settlements* are not permitted, that there must be settlement with the employees involved. It leaves open the question whether an *employee settlement* alone is sufficient or whether a *joint settlement* with employee and union is necessary (Slipsheet 20-21). It concedes that if employee settlements are permitted, then, as to most grievances at least, the union must be allowed to express its views (Slipsheet 20-21 and particularly note 35). We submit that the Act requires union settlements, with the right accorded to the employee to present grievances but not to participate in their disposition.

The disposition of grievances by employee settlements is precluded by the fact that such disposition, without consent of the union, whether of retrospective or prospective matters, introduces the very individual bargaining which Congress intended to eliminate (*supra*). That settlement of grievances is 'bargaining' was clearly recognized by the Court when it referred to the 'power to bargain concerning grievances, that is, to conclude agreements for their settlements'

[1] United Steelworkers of America, United Railroad Workers of America, Amalgamated Clothing Workers of America, United Packinghouse Workers of America, Textile Workers Union of America, International Longshoremen's & Warehousemen's Union, United Office & Professional Workers of America, American Communications Association, American Newspaper Guild, Industrial Union Marine & Shipbuilding Workers of America, United Farm Equipment & Metal Workers of America, International Union of Mine, Mill & Smelter Workers, National Maritime Union of America, United Electrical, Radio & Machine Workers of America, United Automobile, Aircraft, Agricultural Implement Workers of America, Transport Workers Union of America, United Furniture Workers of America, United Transport Service Employees of America, State, County & Municipal Workers of America, Fur & Leather Workers Union.

(Slipsheet 21, note 35). The 'carrier would be free . . . to bargain with each employee for whatever terms its economic power, pitted against his own, might induce him to accept.' "

"We earnestly urge upon the Court . . . that the collective bargaining process has always been viewed by the participants thereto as including the settlement of grievances and, more particularly, that employers and unions have always considered that they had the power to dispose of grievances on a large scale. We call to the attention of the Court the agreement involved in this very case, referred to by the Court in its opinion (Slipsheet 4, Note 5), by which the union and the railroad tried to settle all similar claims then existing. We cannot overestimate the serious consequences of making such agreements ineffective. They are commonly made wherever collective bargaining is established. It will be extremely disturbing to employers and employees alike when employers discover that there is no way, short of settlement with each employee, whereby pending disputes and the possibility of future legal action can be eliminated."

Seldom if ever have the claims of policy been so marshalled on a single side of an issue requiring the interpretation of a statute which, at best, is sufficiently ambiguous to permit these considerations of policy to carry the day. The danger in "adhering" to the original decision is only too clear; it can hardly be lessened by an explanation that extracts meaning from the first opinion.

The results of the opinion of last Term, actual and potential, threatened not only the efficacy of the Railway Labor Act, but generally undermined the basis for all collective bargaining in regard to grievances. It is fair to say that the decision created havoc in the railroad world, for a proper adjustment of industrial relations on the railroads, as the whole course of railroad history shows, is absolutely dependent on appropriate machinery and process of adjustment. The machinery set in motion by the Act was stopped by the opinion. Immediately after the Court's decision of last Term, the two divisions of the Adjustment Board dealing with 94% of the cases under normal circumstances completely shut down. And when they were reopened, they functioned at only a fraction of their normal activity. These Boards are not operating in a vacuum. Their function is to settle by peaceful means employee-employer disputes that would otherwise be settled by a show of power on each side. The Brotherhoods

point to the dangers cumulating in the unadjusted grievances. The Railway Labor Act becomes as ineffective as it was prior to the 1934 amendments; and such a result might well have been anticipated from the destruction of a system that had become customary.

The Court says that it adheres to its previous opinion. Last Term it found that it could not say that the respondents had authorized the union to settle their grievances, and remanded the case for judicial redetermination of the Board's decision. Whatever requirements the Court meant to indicate as sufficient to establish authorization from members of the union to the union the opinion surely conveyed doubt whether the respondents had given authority in a "legally sufficient" way, and encouraged the respondents' claim that they had not authorized their collective agent to settle their grievances. The Court now says that on the record it may be difficult for respondents to prove that they did not authorize the union to represent them. The difficulty becomes apparent as the Court's opinion proceeds. It disclaims that common law agency tests of authority are to be determinative, substitutes "custom and usage," and puts the burden of persuasion on the respondents, having against them the weight of the Board's "expertize," the presumption of regularity, and their own failure to disavow the proceedings before the Board. The hypothetical factors which the Court intimates would defeat respondents' right to sustain this suit are the normal factors in these disputes and are revealed by the record in this case. The way in which these grievances were handled was "the usual manner"; the Adjustment Board exercising its expertness did determine that the union had authority to represent respondents; the respondents did stand by doing nothing while their claims were presented to the Board and determined by it. If the custom of the railroad industry rather than the conventional law of agency is to govern, clearly the expert, centralized Board is the appropriate tribunal for ascertaining whether the authorized bargaining agency is authorized to represent the grievances of its members before the Board, and not the multitudinous courts throughout the country with their varying understanding and varying judgments. The gloss which the Court now puts on its previous opinion in effect recognizes that this is so by the extent

to which it hobbles the right to secure the revision of the Board's determination which it abstractly bestows. Thereby it undermines any justification for the notion that Congress intended to open the courts for a redetermination of the issue of authorization. When Congress was so miserly in granting any jurisdiction to the courts under the Act, it would be surprising if it had authorized review in a field where, as the Court's new opinion makes clear, there was likely to be so little dispute. Yet it is suggested that respondents are entitled to a judicial hearing to determine among other things whether they received individual notice of the proceedings before the Board. But the whole course and current of the railway trade union relationships imply that the interest of the individual member as to issues arising under the collective agreement is entrusted to his chosen representative. To require notice to the particular individuals affected by the specific controversies is to disregard the presupposition of the relationship between union members and their officials and the actualities of practice upon which the Railway Labor Act was based.

If the context of history into which the Railway Labor Act must be placed for a proper interpretation reveals that Congress was bent on creating a system complete in itself for securing peaceful industrial relations in the railroad world, this Court should not import into that system traditional assumptions and rules derived from a scheme of judicially enforceable rights. The new system was devised precisely for the purpose of replacing the ordinary judicial processes in resolving railway labor controversies, except in the very limited instances where Congress specifically retained judicial participation. The whole statute reveals the restricted opportunities for resort to the courts which Congressional policy deemed it appropriate to reserve, even though such restrictions were not formulated with exquisite or explicit precision. By §§ 3 First (p) and 9, 44 Stat. 577, 578, 585, 48 Stat. 1189, 45 U. S. C. §§ 153 and 159, Congress gave courts jurisdiction, thus showing that the subject of judicial remedies was present in the mind of Congress and indicating the strictly defined limits within which they were available. In short, the policy of the legislation, derived from a long and painful experience, is to keep labor controversies on the railroads out of the

courts except in the few specifically defined situations where Congress has put them into the courts. Congress has made a departure in the Railway Labor Act from the normal availability of judicial remedies, and we ought not to read the new law through the spectacles of the old remedies.

A court which has held that under the Railway Labor Act a Board's interpretation of its authority given by a provision of the Act is final and not subject to judicial review denies that another Board under the Act may determine finally whether those who submit controversies on behalf of their members have authority to make such submission so that the Board may settle such disputes, although the determination of the controversy itself is not reviewable unless it involves a money award. See *Switchmen's Union of North America* v. *National Mediation Board*, 320 U. S. 297. Railway Labor Act, § 9 Third, 44 Stat. 577, 585, 45 U. S. C. § 159. The answer to such a mutilating construction of the Railway Labor Act was given by this Court in *General Committee of Adjustment* v. *Missouri-Kansas-Texas Railroad Co.*, 320 U. S. 323, 333: "The inference is strong that Congress intended to go no further in its use of the processes of adjudication and litigation than the express provisions of the Act indicate."

SUPREME COURT OF THE UNITED STATES.

No. 160.—October Term, 1944.

Elgin, Joliet and Eastern Railway Company, Petitioner, *vs.* G. W. Burley, et al.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

[June 11, 1945.]

Mr. Justice Rutledge delivered the opinion of the Court.

This cause, arising upon an amended complaint,[1] brings for decision novel and important questions concerning the authority of a collective bargaining representative, affecting the operation of the Railway Labor Act of 1934. 48 Stat. 1185, 45 U. S. C. § 151 ff. The ultimate issues are whether such an agent has authority, by virtue of the Act or otherwise, either to compromise and settle accrued monetary claims of ten employees or to submit them for determination by the National Railroad Adjustment Board to the exclusion of their right, after the settlement and after the Board's adverse decision, to assert them in a suit brought for that purpose. The claims are for "penalty damages" for alleged violation of the starting time provisions of a collective agreement, varying from $3,500 to $14,000, and in the aggregate amounting to $65,274.00.[2]

The District Court rendered summary judgment for the carrier, holding that the Board's award was a final adjudication of the claims, within the union's power to seek and the Board's to make, precluding judicial review.[3] The Court of Appeals re-

[1] Amendments were allowed to cure jurisdictional defects found to exist upon an earlier appeal. Alderman *v.* Elgin, Joliet & Eastern Ry. Co., 125 F. 2d 971.

[2] The record sets forth no provision for penalty damages. But the complaint alleges that under the terms of the agreement each of the plaintiffs is entitled to "pay for an additional day, at time and one-half, at the regular daily rate" for each day he was required to work contrary to the agreement's terms.

[3] The court said: "I think that the controversy was submitted to the Board, that it had jurisdiction and that it was decided, and that the plaintiffs were represented there and are bound thereby. . . . I think the ruling of the Adjustment Board was binding upon the plaintiffs as well as upon the defendant, and that it is binding on this court in this proceeding."

versed the judgment, 140 F. 2d 488, holding that the record presented a question of fact whether the union had been authorized by respondents "to negotiate, compromise and settle" the claims. We granted certiorari, 323 U. S. —, in order to resolve the important questions affecting application and operation of the Act.

A statement of the more important facts will put the issues in sharper perspective. The controversy relates to operations in petitioner's so-called "Whiting Yard." Prior to July 24, 1934, respondents, or some of them, were employed by the Standard Oil Company to do private intraplant switching in its Whiting, Indiana, plant. On that date this work was taken over by petitioner. Until then Standard Oil's switching crews began work each day at hours fixed in advance by the management, which varied as plant operations required.

Prior to 1934 petitioner's crews at all yards in Indiana and Illinois began work daily in accordance with starting time provisions contained in Article 6 of a collective agreement made in 1927 between petitioner and the Brotherhood of Railroad Trainmen, governing rules, working conditions and rates of pay of yardmen.

Upon transfer of the Whiting yard switching to petitioner, respondents theretofore employed by Standard Oil became employees of petitioner and members of the Brotherhood. On July 24, 1934, company officials conferred with representatives of the engineers, the firemen and the yardmen concerning terms of employment. The Brotherhood acted for the yardmen. Apparently agreement was reached on all matters except starting time but, as to that, versions of what transpired differ. Respondents and the Brotherhood have maintained that the 1927 agreement, including Article 6, became applicable to them upon the transfer. They say, however, that they assented to a suspension of Article 6 for thirty days from July 27, 1934, to enable the company to work out adjustment to the plant's operations, and accordingly it governed their relation with petitioner from August 26, 1934.

The company has insisted that Article 6 did not become applicable to respondents upon the transfer and that it made no agreement to apply Article 6, other than to follow it as closely as possible, prior to October 31, 1938, when it and the Brotherhood eventually agreed to place Whiting yard crews on fixed starting time, under circumstances to be noted.

Whichever version is true, a long controversy resulted. The carrier continued to follow the former practice, although departures from the schedule were reduced, as it claims, in conformity with the oral undertaking to observe it as far as possible. The work went on without interruption. But numerous complaints on account of departures were made through local officers of the Brotherhood. Time slips were filed by the employees. Frequent negotiations took place. None however resulted in a settlement prior to October 31, 1938.

In this state of affairs, respondents authorized the Brotherhood to file complaint with the National Railroad Adjustment Board for violation of Article 6. This was done on November 23, 1936. The "statement of claim" was signed and filed by Williams, chairman of the general grievance committee. It asserted that the carrier, having "placed the employees under the agreement of the yardmen," had "failed to put into effect the starting time provisions" of Article 6, and denied that violation was justified either because the carrier had agreed with the Engineers to follow the formerly prevailing practice or by the carrier's claim that the work could be done in no other way. The submission was intended to secure compliance. There was no prayer for money damages. Petitioner maintained that Article 6 was not applicable.

The Board, following its customary procedure,[4] docketed the claim as No. 3537, notified the carrier and the union that the case, with many others docketed at the same time, was "assumed to be complete," and forwarded to each copies of the other's submissions. The record does not disclose what followed until nearly two years later.

On October 31, 1938, Williams and Johnson, secretary of the Brotherhood, two of the grievance committee's three members, accepted an offer made by petitioner's president, Rogers, to settle the claim. The settlement took the form of a proposal, made in a letter by Rogers to Williams, to settle some 61 different claims, including "Labor Board Docket No. 3537—Starting time of

[4] The procedure, though informal, consists principally in written statements or "submissions" filed by the parties, which perform the functions of pleading and evidence combined, and oral argument upon the submissions thus made. See Garrison, The National Railroad Adjustment Board: A Unique Administrative Agency (1937) 46 Yale L. J. 567, for a detailed description of the procedure. See also Final Report of the Attorney General's Committee on Administrative Procedure (1941) 185 ff.; Administrative Procedure in Government Agencies, Sen. Doc. No. 10, Part IV, 77th Cong., 1st Sess.

switch engines in Whiting S. O. Yard." Williams and Johnson endorsed acceptance for the Brotherhood and the yardmen on the letter. Because of its importance, pertinent portions are set forth in the margin.[5] On the day the settlement was concluded Rogers and Williams advised the Board of it by letter and jointly requested that the case be withdrawn from the docket, which accordingly was done.

Notwithstanding the settlement, a further dispute arose. In March, 1939, the Brotherhood, through Williams, requested the carrier to furnish a complete list of crews in the Whiting yard started at times other than those fixed by Article 6 from August 27, 1934, to November 15, 1938, when the settlement became effective. The company declined to furnish the list, stating it was at

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[5] The letter was addressed to Williams, as general chairman of the Brotherhood, and dated October 28, 1938. It stated:

"Since my letter of August 18th in which I tentatively proposed settlement of certain matters of grievance we have had further correspondence and conferences which have modified our decision in some cases. Therefore, in order that the whole matter be placed in concrete form I am outlining below our proposals to settle all of the cases except as otherwise specified.

. . . . . .

"Case No. 5—Labor Board Docket # 3537—Starting time of switch engines in Whiting S. O. Yard.

"Settled by agreement that *the starting times for a ninety day trial period* commencing November 15th, 1938, *shall be the times provided for in Article 6* of the Yardmen's Agreement *instead of the starting times heretofore agreed upon and now being followed.* If at the end of the ninety day trial period the Railway Company or its employees claim that the starting times as fixed in Article 6 do not result in efficient and economical operation and in satisfaction to our employees and to the industry served, then representatives of the Railway Company and representatives of the Yardmen, and representatives of the Engineers and representatives of the Firemen *will sit down and work out a schedule of starting time best suited for meeting the special requirements of the industry.*

. . . . . .

"We have by this letter given you a complete resume of all of the claims which have not heretofore been disposed of, filed by you on behalf of the employees whom you represent and have proposed in this letter a very liberal disposition of all the cases involved. The settlements proposed are predicated on *a complete settlement and withdrawal of all cases now pending* either before the board, *or under discussion with this office except Case No. 4*, which it is understood will be left to a decision by the National Railroad Adjustment Board, *and it is further understood that in the event these settlements are accepted that the claims listed in this letter cover all claims of a similar nature, and that no other claims covering the same or like situations will be presented when such claims arise from causes occurring prior to the date of this settlement.* [Emphasis added]

"Yours truly,
"S. M. Rogers, President.

"Accepted for the Yardmen: Oct. 31, 1938.
"C. H. Williams, General Chairman, B. of R. T.
"S. F. Johnson, Secretary, B. of R. T."

a loss to understand the reason for the request in view of the settlement.

The upshot of the dispute was the filing of another claim with the Board, Docket No. 7324, on May 18, 1939, by Williams, acting for the Brotherhood. This submission was "for one day's pay at time and one-half for each foreman and each helper for each day they were required to work in yard service in the Whiting (Standard Oil Company) Yard, in violation of the fixed starting time provided for in Article No. 6 of the Yardmen's Agreement . . . effective January 1, 1927, and applicable to Whiting (Standard Oil Company) Yardmen, July 27, 1934, from dates of August 27, 1934, until November 14, 1938, inclusive."

The submission not only maintained the applicability of Article 6 and accrual of the individual claims asserted. It also maintained that the settlement of October 31, 1938, was effective only to fix the starting time for the future and had no effect to waive or determine individual claims for penalty damages accrued prior to the settlement.[6]

The carrier's submission reiterated its position in Case No. 3537. It also relied upon the settlement as precluding later assertion of any claim, individual or collective, based upon occurrences prior to the date of the settlement.

The matter went to decision by the Board. Under the procedure prescribed in case of deadlock, cf. § 3 First (l), a referee was called in. The award was made by the First Division on September 6, 1940. It sustained the Board's jurisdiction,[7] found that "the parties to said dispute were given due notice of hearing

[6] Cf. note 5. The submission stated: "There were no agreements reached whereby payment for violation of Article No. 6 of the Yardmen's Agreement would be waived as a result of withdrawal of Labor Board Docket No. 3537. *In fact that case held no claims for payment for time. It was simply a case to settle* the dispute as to *the carrier's right to force the yard crews* in the Whiting yard *to work at times other than the fixed starting time* provided for in Article 6. . . .

"As stated before, Case No. 5—Labor Board Docket No. 3537 *contained no claim for pay* to Whiting Yardmen. *Consequently it was not a question before the Management and the Committee in the* starting time *negotiation* and claim cannot be made that a waiver was made on a matter which was not negotiated."

The submission also denied that oral agreements relating to starting time, claimed by the carrier to have been made at the time of the transfer in 1934, could be effective "to invalidate the prescribed written rule of Article 6." Williams however did not question the validity of the verbal agreement, as he maintained, for the thirty day suspension.

[7] The submissions in no way challenged the jurisdiction of the Board or of the Division.

thereon," and held that "the evidence shows that the parties to the agreement disposed of the claim here made by the letter of carrier dated October 28, 1938, accepted by employees October 31, 1938." Accordingly the claim was "denied per findings."

Thereafter, on November 19, 1940, the present suit was instituted. As has been noted, the case comes here after a summary judgment rendered on the carrier's motion, supported by the affidavit of its vice president. This in effect set up the compromise agreement and the award in Case No. 7324 as bases for the judgment sought.

The range and precise nature of the issues may be summarized best perhaps as they were shaped upon respondents' opposition to the carrier's motion. They denied that either Williams or the union had authority to release their individual claims or to submit them for decision by the Board. They relied upon provisions of the Brotherhood's constitution and rules,[8] of which the carrier was alleged to have knowledge, as forbidding union officials to release individual claims or to submit them to the Board "without specific authority to do so granted by the individual members themselves"; and denied that such authority in either respect had been given.

The validity and the conclusive effect of the award were challenged also upon other grounds, among them that respondents individually received no notice of the submission or the hearing until after the award was made; that since the award denied a claim for money damages, it was within the exception of Section 3 First (m), which provides that "the awards shall be final and binding upon both parties to the dispute, except in so far as they shall contain a money award," and therefore did not preclude this suit; and that the Act, if construed to make the award conclusive, would violate the Fifth Amendment's due process provision by denying judicial review to defeated employees, though allowing it to defeated employers. Cf. § 3 First (p), (q); *Washington Terminal Co.* v. *Boswell,* 124 F. 2d 235, affirmed by an equally divided Court, 319 U. S. 732.

Finally respondents suggested most sweepingly that the Board

[8] See Part III. The provisions regulate the union's internal procedure in relation to making changes in a "general or system wage schedule or agreement," Rule No. 3, and that to be followed when the local chairman or grievance committee fails "satisfactorily to adjust any grievance referred to it." Rule No. 7. The latter includes a provision that "a general grievance committee may authorize their chairman to handle all grievances received from local lodges." See also note 40.

may act "merely as an arbitrator," with the result that "any decisions thereunder are void because it passes on matters and bases its decision and its opinion on law and fact which is contrary to public policy." The prayer was that the court overrule the carrier's motion for summary judgment and, in doing so, determine that the release was not effective; the award was not a final adjudication of the claims; and the award was void for lack of jurisdiction of the parties or the subject matter or "because said Act under which award was entered is unconstitutional."

The District Court's judgment rested squarely on the conclusive effect of the award in Docket No. 7324. It did not indicate whether it regarded the Brotherhood's authority to submit the claims and appear for the employees as derived from the statute or, apart from the statute, as a matter of law upon the particular facts. But it must be taken to have held that, upon the pleadings and the affidavits, no genuine issue of material fact was presented, Fed. Rules Civ. Proc., Rule 56(c), and therefore that it was immaterial if, as alleged, respondents had not individually given the Brotherhood or Williams specific authority to submit their claims for decision or represent them in the hearings.

The Court of Appeals, however, made no reference to the issues concerning the award and its effect upon the claims. But its judgment must be taken to have determined implicitly that none of petitioner's contentions in these respects is valid.

The issues are not merely, as the Court of Appeals assumed, whether the Brotherhood had authority to compromise and settle the claims by agreement with the carrier and whether on the record this presents a question of fact. For petitioner insists, and the District Court held, that the award of the Board was validly made, and is final, precluding judicial review. We do not reach the questions of finality, which turn upon construction of the statutory provisions and their constitutional validity as construed.[9] Those questions should not be determined unless the award was validly made, which presents, in our opinion, the crucial question. Respondents attack the validity and legal effectiveness of the award in three ways. Two strike at its validity on narrow grounds. Respondents say the Brotherhood had no power to submit the dispute for decision by the Board without authority

[9] Cf. § 3 First (m), (o), (p), (q).

given by each of them individually and that no such authority was given. They also maintain that they were entitled to have notice individually of the proceedings before the Board and none was given.

The third and most sweeping contention undercuts all other issues concerning the award's effects, whether for validity or for finality. In substance it is that the award, when rendered, amounts to nothing more than an advisory opinion. The contention, founded upon language of the opinion in *Moore* v. *Illinois Central R. Co.*, 312 U. S. 630, regards the Act's entire scheme for the settlement of grievances as wholly conciliatory in character, involving no element of legal effectiveness, with the consequence that the parties are entirely free to accept or ignore the Board's decision.

At the outset we put aside this broadest contention as inconsistent with the Act's terms, purposes and legislative history.[10] The *Moore* case involved no question concerning the validity or the legal effectiveness of an award when rendered.[11] Nor did it purport to determine that the Act creates no legal obligations through an award or otherwise. Apart from the affirmance by equal division in *Washington Terminal Co.* v. *Boswell*, *supra*, both prior and later decisions here are wholly inconsistent with such a view of its effects. Cf. *Virginian Ry. Co.* v. *System Federation*, 300 U. S. 515; *Texas & N. O. R. Co.* v. *Railway Clerks*, 281 U. S. 548;[12] *Switchmen's Union* v. *National Mediation Board*,

[10] Cf. Part. I.

[11] It was held that nothing in the Act "purports to take away from the courts the jurisdiction to determine a controversy over wrongful discharge or to make an administrative finding a prerequisite to filing a suit in court," 312 U. S. at 634; and therefore the employee's suit could be maintained against the carrier without prior resort to the Adjustment Board. Among the reasons assigned was that the machinery provided for settling disputes was not "based on a philosophy of legal compulsion" but created "a system for peaceful adjustment and mediation voluntary in its nature."

The problem presented was whether the Adjustment Board procedure either was exclusive or was an essential preliminary to judicial proceedings within the doctrine of primary jurisdiction. These were questions not entirely determinable by the criterion of whether the procedure is wholly advisory or conciliatory in character. For, conceivably, Congress might have made the taking of the Board's merely advisory opinion a condition precedent to asking for judicial relief; and, conversely, allowing that relief without prior resort to the Board does not necessarily make the Board's action, when taken, merely advisory.

[12] Thus, one of the statute's primary commands, judicially enforceable, is found in the repeated declaration of a duty upon all parties to a dispute to negotiate for its settlement. See note 26; Virginian Ry. Co. v. System

320 U. S. 297; *General Committee* v. *M-K-T R. Co.*, 320 U. S. 323; *General Committee* v. *Southern Pacific Co.*, 320 U. S. 338.

I.

The difference between disputes over grievances and disputes concerning the making of collective agreements is traditional in railway labor affairs. It has assumed large importance in the Railway Labor Act of 1934, substantively and procedurally.[13] It divides the jurisdiction and functions of the Adjustment Board from those of the Mediation Board, giving them their distinct characters. It also affects the parts to be played by the collective agent and the represented employees, first in negotiations for settlement in conference and later in the quite different procedures which the Act creates for disposing of the two types of dispute. Cf. §§ 3, 4.

The statute first marks the distinction in Section 2, which states as among the Act's five general purposes: "(d) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (e) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions." The two sorts of dispute are sharply distinguished,[14] though there are points of common treatment. Nevertheless, it is clear from the Act itself, from the history of railway labor disputes and from the legislative history of the various statutes which have dealt with them,[15] that Congress has drawn major lines of difference between the two classes of controversy.

Federation, 309 U. S. 313; cf. Switchmen's Union v. National Mediation Board, 320 U. S. 297, 300, 320; General Committee v. M-K-T R. Co., 320 U. S. 323, 331, 334. This duty is not merely preliminary. Final exhaustion of the possibility of agreement is required in order to [illegible] Virginian Ry. Co. v. System Federation, supra, at 548, 550; Brotherhood v. Toledo, P. & W. R. Co., 321 U. S. 50, 56 ff. At successive stages of the statutory procedure other duties are imposed. Cf. §§ 3 First (i), (j), 10.

13 Cf. the references cited in notes 9 and 10.

14 Cf. text Part II at note 39; also Virginian Ry. Co. v. National Labor Relations Board, 147 F. 2d 68, 72, 73.

15 See the references cited in note 9. Hearings before Committee on Interstate Commerce on H. R. 7650, 73d Cong., 2d Sess.; Hearings before Committee on Interstate Commerce on S. 1629, 73d Cong., 2d Sess.; Pennsylvania R. Co. v. Railroad Labor Board, 261 U. S. 72; Pennsylvania System Federation v. Pennsylvania R. Co., 267 U. S. 203; Texas & N. O. R. Co. v. Brotherhood, 281 U. S. 548; Virginian Ry. Co. v. System Federation, 300 U. S. 515.

The first relates to disputes over the formation of collective agreements or efforts to secure them. They arise where there is no such agreement or where it is sought to change the terms of one, and therefore the issue is not whether an existing agreement controls the controversy. They look to the acquisition of rights for the future, not to assertion of rights claimed to have vested in the past.

The second class, however, contemplates the existence of a collective agreement already concluded or, at any rate, a situation in which no effort is made to bring about a formal change in terms or to create a new one. The dispute relates either to the meaning or proper application of a particular provision with reference to a specific situation or to an omitted case. In the latter event the claim is founded upon some incident of the employment relation, or asserted one, independent of those covered by the collective agreement, e. g., claims on account of personal injuries. In either case the claim is to rights accrued, not merely to have new ones created for the future.

In general the difference is between what are regarded traditionally as the major and the minor disputes of the railway labor world.[16] The former present the large issues about which strikes ordinarily arise with the consequent interruptions of traffic the Act sought to avoid. Because they more often involve those consequences and because they seek to create rather than to enforce contractual rights, they have been left for settlement entirely to the processes of noncompulsory adjustment.

The so-called minor disputes, on the other hand, involving grievances, affect the smaller differences which inevitably appear in the carrying out of major agreements and policies or arise incidentally in the course of an employment. They represent specific maladjustments of a detailed or individual quality. They seldom

[16] Cf. the references cited in note 4. Commissioner (also Coordinator) Eastman, who very largely drafted the 1934 amendments, said in testifying at the House Committee hearings concerning them:

"Please note that disputes concerning changes in rates of pay, rules, or working conditions may not be so referred [to the National Adjustment Board], but are to be handled, when unadjusted, through the process of mediation. The national adjustment board is to handle only the minor cases growing out of grievances or out of the interpretation or application of agreements." Hearings before Committee on Interstate Commerce on H. R. 7650, 73 Cong., 2d Sess., 47; cf. also pp. 49, 51, 59, 62. And see the testimony of Harrison, a principal union proponent, before the House Committee, *id.*, at 80-83; and before the Senate Committee, Hearings before Committee on Interstate Commerce on S. 3266, 73d Cong., 2d Sess., 33, 35.

produce strikes, though in exaggerated instances they may do so.[17] Because of their comparatively minor character and the general improbability of their causing interruption of peaceful relations and of traffic, the 1934 Act sets them apart from the major disputes and provides for very different treatment.

Broadly, the statute as amended marks out two distinct routes for settlement of the two classes of dispute, respectively, each consisting of three stages. The Act treats the two types of dispute alike in requiring negotiation as the first step toward settlement and therefore in contemplating voluntary action for both at this stage, in the sense that agreement is sought and cannot be compelled. To induce agreement, however, the duty to negotiate is imposed for both grievances and major disputes.[18]

Beyond the initial stages of negotiation and conference, however, the procedures diverge. "Major disputes" go first to mediation under the auspices of the National Mediation Board; if that fails, then to acceptance or rejection of arbitration, cf. § 7; *Trainmen* v. *Toledo, P. & W. R. Co.*, 321 U. S. 50; and finally to possible presidential intervention to secure adjustment. § 10. For their settlement the statutory scheme retains throughout the traditional voluntary processes of negotiation, mediation, voluntary arbitration, and conciliation. Every facility for bringing about agreement is provided and pressures for mobilizing public opinion are applied. The parties are required to submit to the successive procedures designed to induce agreement. § 5 First (b). But compulsions go only to insure that those procedures are exhausted before resort can be had to self-help. No authority is empowered to decide the dispute and no such power is intended, unless the parties themselves agree to arbitration.

The course prescribed for the settlement of grievances is very different beyond the initial stage. Thereafter the Act does not leave the parties wholly free, at their own will, to agree or not to agree. On the contrary, one of the main purposes of the 1934 amendments was to provide a more effective process of settlement.[19]

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[17] Cf. the testimony of Eastman and Harrison, cited in note 16.

[18] Cf. note 12; also notes 26, 27, and text *infra*. The obligation is not partial. In plain terms the duty is laid on carrier and employees alike, together with their representatives; and in equally plain terms it applies to all disputes covered by the Act, whether major or minor.

[19] H. Rep. No. 1944 on H. R. 9861, 73d Cong., 2d Sess., 3; S. Rep. No. 1065 on S. 3266, 73d Cong., 2d Sess., 1, 2.

Prior to 1934 the parties were free at all times to go to court to settle these disputes. Notwithstanding the contrary intent of the 1926 Act, each also had the power, if not the right, to defeat the intended settlement of grievances by declining to join in creating the local boards of adjustment provided for by that Act. They exercised this power to the limit. Deadlock became the common practice, making decision impossible. The result was a complete breakdown in the practical working of the machinery. Grievances accumulated and stagnated until the mass assumed the proportions of a major dispute. Several organizations took strike ballots and thus threatened to interrupt traffic, a factor which among others induced the Coordinator of Transportation to become the principal author and advocate of the amendments. The sponsor in the House insisted that Congress act upon them before adjournment for fear that if no action were taken a railroad crisis might take place.[20] The old Mediation Board was helpless.[21] To break this log jam, and at the same time to get grievances out of the way of the settling of major disputes through the functioning of the Mediation Board, the Adjustment Board was created and given power to decide them.[22]

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[20] Cf. 78 Cong. Rec. 12553. Coordinator Eastman referred, in his testimony, to four recent strike votes occasioned by deadlock. Hearings before Committee on Interstate Commerce on S. 3266, 73d Cong., 2d Sess., 17.

[21] The Chairman told the Senate Committee: "The provision in the present act [1926] for adjustment boards is in practice about as near a fool provision as anything could possibly be. I mean this—that on the face of it they shall, by agreement, do so and so. Well, you can do pretty nearly anything by agreement, but how can you get them to agree?" Hearings before Committee on Interstate Commerce on S. 3266, 73d Cong., 2d Sess., 137.

[22] See, for a general view of the circumstances inducing enactment of the 1934 Amendments, the references cited above in notes 4, 15, 16, 19. The report of the House Committee in charge of the bill stated:

"Many thousands of these disputes have been considered by boards established under the Railway Labor Act; but the boards have been unable to reach a majority decision, and so the proceedings have been deadlocked. These unadjusted disputes have become so numerous that on several occasions the employees have resorted to the issuance of strike ballots and threatened to interrupt interstate commerce in order to secure an adjustment. This has made it necessary for the President of the United States to intervene and establish an emergency board to investigate the controversies. This condition should be corrected in the interest of industrial peace and of uninterrupted transportation service. This bill, therefore, provides for the establishment of a national board of adjustment to which these disputes may be submitted if they shall not have been adjusted in conference between the parties." H. Rep. No. 1944, 73d Cong., 2d Sess., 3. Cf. also the testimony of Coordinator Eastman, Hearings before Committee on Interstate Commerce on H. R. 7650, 73d Cong., 2d Sess., 49.

The procedure adopted is not one of mediation and conciliation only, like that provided for major disputes under the auspices of the Mediation Board. Another tribunal of very different character is established with "jurisdiction" to determine grievances and make awards concerning them. Each party to the dispute may submit it for decision, whether or not the other is willing, provided he has himself discharged the initial duty of negotiation.[23] § 3 First (i). Rights of notice, hearing, and participation or representation are given. § 3 First (j). In some instances judicial review and enforcement of awards are expressly provided or are contemplated. § 3 First (p); cf. § 3 First (m). When this is not done, the Act purports to make the Board's decisions "final and binding." § 3 First (m).

The procedure is in terms and purpose very different from the preexisting system of local boards. That system was in fact and effect nothing more than one for what respondents call "voluntary arbitration." No dispute could be settled unless submitted by agreement of all parties. When one was submitted, deadlock was common and there was no way of escape. The Adjustment Board was created to remove the settlement of grievances from this stagnating process and bring them within a general and inclusive plan of decision.[24] The aim was not to dispense with agreement. It was to add decision where agreement fails and thus to safeguard the public as well as private interests against the harmful effects of the preexisting scheme.

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[23] Section 3 First (i) expressly conditions the right to move from negotiation into proceedings before the Adjustment Board upon "failing to reach an adjustment in this manner," i. e., by negotiation.

[24] See the testimony of Coordinator Eastman and Mr. Harrison, cited in note 16. The latter stated, at the Senate Committee hearings, pp. 33, 35:

"... [T]his has been a question for the last 14 years as to what kind of boards we are going to have to settle our grievances. ... We have always sought national boards; the railroads ... have sought the system boards, regional boards. ... Most of the boards ... under the present law have deadlocked on any number of cases. As a result of that there was fast growing up in our industry a serious condition that might very well develop into substantial interruption of interstate commerce. ... These *railway labor organizations have always opposed compulsory determination of their controversies.* We have lived a long time and got a lot of experience, and we know that these minor cases that develop out of contracts that we make freely, and ... *we are now ready to concede that we can risk having our grievances go to a board and get them determined, and that is a contribution that these organizations are willing to make;* ... if we are going to get a hodgepodge arrangement by law, then we don't want to give up that right, because we only give up the right because we feel that we will get a measure of justice by this machinery that we suggest here." (Emphasis added.)

II.

The collective agent's power to act in the various stages of the statutory procedures is part of those procedures and necessarily is related to them in function, scope and purpose.

The statute itself vests exclusive authority to negotiate and to conclude agreements concerning major disputes in the duly selected collective agent. Cf. *Virginian Ry. Co.* v. *System Federation, supra.*[28] Since the entire statutory procedure for settling major disputes is aimed only at securing agreement and not decision, unless the parties agree to arbitration, this exclusive authority includes representation of the employees not only in the stage of conference, but also in the later ones of mediation, arbitration and conciliation.

Whether or not the agent's exclusive power extends also to the settlement of grievances, in conference or in proceedings before the Board, presents more difficult questions. The statute does not expressly so declare. Nor does it explicitly exclude these functions. The questions therefore are to be determined by implication from the pertinent provisions. These are the ones relating to rights of participation in negotiations for settlement and in proceedings before the Board. They are in part identical with the provisions relating to major disputes, but not entirely so; and the differences are highly material.

The questions of power to bargain concerning grievances, that is, to conclude agreements for their settlement, and to represent aggrieved employees in proceedings before the Board are not identical. But they obviously are closely related in the statutory scheme and in fact. If the collective agent has exclusive power to settle grievances by agreement, a strong inference, though not necessarily conclusive, would follow for its exclusive power to represent the aggrieved employee before the Board. The converse also would be true. Accordingly it will be convenient to consider the two questions together.

The primary provisions affecting the duty to treat are found in Section 2 First and Second, imposing the duty generally as to all disputes, both major and minor, and Sections 2 Sixth and 3 First (i), together with the proviso to Section 2 Fourth, which apply specially to grievances. These sections in material part

[28] Cf. also Medo Photo Supply Corp. v. National Labor Relations Board, 321 U. S. 678; J. I. Case Co. v. National Labor Relations Board, 321 U. S. 332.

are set forth in the margin,[26] except the proviso which is as follows: "Provided, That nothing in this Act shall be construed to prohibit a carrier from permitting *an employee, individually,* or local representatives of employees *from conferring* with management during working hours *without loss of time,* or to prohibit a carrier from furnishing free transportation to its employees while engaged in the business of a labor organization."[27] (Emphasis added.)

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[26] By Section 2 First, "*It shall be the duty of* all carriers, their officers, agents, and *employees* to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and *to settle all disputes,* whether arising out of *the application* of such agreements or otherwise, in order to avoid any interruption to commerce. . . ." By Section 2 Second, "*All* disputes between a carrier or carriers and its or their employees *shall be considered, and, if possible, decided,* with all expedition, in conference *between representatives designated and authorized* so to confer, respectively, by the carrier or carriers and *by the employees thereof interested in the dispute.*" (Emphasis added.) These are the basic sections creating the duty, applicable to all disputes, major or minor, and to carriers and employees alike.

Other provisions affecting the general duty to treat are those of Section 2 Third, that "representatives, *for the purposes of this Act,* shall be designated by the respective parties without interference" by the other and "need not be persons in the employ of the carrier"; of Section 2 Fourth, that "the majority of any craft or class of employees shall have the right to determine who shall be *the representative of the craft or class for the purposes of this Act*"; and of Section 2 Eighth that "*every* carrier shall notify its employees by printed notices . . . that *all disputes* between the carrier and its employees *will be handled in accordance with the requirements of this Act.*" (Emphasis added.)

Section 2 Sixth applies specially to grievances, as does Section 3 First (i). The former provides: "In case of a dispute between a carrier or carriers and its or their employees, *arising out of grievances or out of the interpretation or application of agreements* concerning rates of pay, rules, or working conditions, *it shall be the duty of the designated representative* or representatives of such carrier or carriers and *of such employees,* within ten days after the receipt of notice of a desire on the part of either party *to confer* in respect to such dispute, to specify a time and place. . . ." Section 3 First (i) is as follows: "The disputes between *an employee* or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act, *shall be handled in the usual manner up to and including* the chief operating officer of the carrier designated to handle such disputes; but, *failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board* with a full statement of the facts and all supporting data bearing upon the disputes." (Emphasis added.)

[27] Section 2 Eighth makes this proviso part of the contract of employment between the carrier and each employee, and Section 2 Tenth makes it a misdemeanor for the carrier to refuse to observe it. Section 2 Eighth incorporates the provisions of Sections 2 Third, Fourth and Fifth in each employee's contract of employment. Section 2 Tenth makes it a misdemeanor for the carrier to fail or refuse to comply with the terms of Sections 2 Third, Fourth, Fifth, Seventh and Eighth.

Relating to participation in the Board's proceedings, in addition to the concluding sentence of Section 3 First (i), see note 26, is Section 3 First (j), as follows: "Parties may be heard either *in person*, by counsel, or by other representatives, as they may respectively elect, and the several divisions of the Adjustment Board shall give due notice of all hearings *to the employee* or employees and the carrier or carriers involved in any dispute submitted to them." (Emphasis added)

Petitioner urges that, notwithstanding the proviso and Section 3 First (j), the effect of the provisions taken as a whole is to make the collective agent the employees' exclusive representative for the settlement of *all* disputes, both major and minor, and of the latter "whether arising out of the application of such [collective] agreements or otherwise." The argument rests primarily upon Sections 2 First, Second, Third, Fourth, Sixth, and 3 First (i). It emphasizes the carrier's duty to treat with the collective representative, as reinforced by Sections 2 Eighth and Tenth.[28]

Petitioner does not squarely deny that the aggrieved employee may confer with the carrier's local officials either personally or through *local* union representatives in accordance with the proviso to Section 2 Fourth. But this right, if it exists, is regarded apparently as at most one to be heard, since in petitioner's view the power to make settlement by agreement is vested exclusively in the collective agent. Cf. §§ 2 Sixth and 3 First (i).

The collective agent, as the carrier conceives the statute, is the "representative[s], designated and authorized to confer" within the meaning of Section 2 Second, without distinction between major and minor disputes. It is likewise the "representative, for the purposes of this Act," again without distinction between the two types of dispute, in the selection of which by "the respective parties" Section 2 Third forbids the other to interfere. It is also "the designated representative" of the employees with whom, by Section 2 Sixth, the carrier is required to treat concerning grievances in conference, a provision considered to carry over into Section 3 First (i). The latter requires that disputes over grievances "shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes."

[28] See note 27.

In accordance with this view "either party," within the further provision of Section 3 First (i) authorizing reference of the dispute to the Adjustment Board "by petition of the parties or by either party," refers to the carrier or the collective agent, not to the aggrieved employee acting otherwise than by the collective agent. Hence, "parties" as used in Section 2 First (j) is given similar meaning. Consequently the collective agent also has exclusive power to submit the dispute to the Board and to represent aggrieved employees before it.

Petitioner's view has been adopted, apparently, in the general practice, if not the formally declared policy of the Adjustment Board. And this, it seems, has been due to the position taken consistently by the employees' representatives on the Board, over the opposition of carrier representatives.[29] The unions, apparently, like petitioner in this case, interpret the Act as not contemplating two distinct systems for the settlement of disputes, one wholly collective for major disputes, the other wholly individual for minor ones. In this view the collective agent becomes a party to the collective agreement by making it and its interest as representative of the collective interest does not cease when that function ends. It remains a party to the agreement, as such representative, after it is made; and consequently, in that capacity and for the protection of the collective interest, is concerned with the manner in which the agreement may be interpreted and applied.

Accordingly, petitioner urges that the statute, both by its terms and by its purpose, confers upon the collective agent the same exclusive power to deal with grievances, whether by negotiation and contract, or by presentation to the Board when agreement fails, as is given with respect to major disputes. And the aggrieved employee's rights of individual action are limited to rights of hearing before the union and possibly also by the carrier.

We think that such a view of the statute's effects, in so far as it would deprive the aggrieved employee of effective voice in any settlement and of individual hearing before the Board, would be contrary to the clear import of its provisions and to its policy.

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[29] Cf. Administrative Procedure in Government Agencies, Sen. Doc. 10, Part IV, 77th Cong., 1st Sess., 7.

It would be difficult to believe that Congress intended, by the 1934 amendments, to submerge wholly the individual and minority interests, with all power to act concerning them, in the collective interest and agency, not only in forming the contracts which govern their employment relation,[30] but also in giving effect to them and to all other incidents of that relation. Acceptance of such a view would require the clearest expression of purpose. For this would mean that Congress had nullified all preexisting rights of workers to act in relation to their employment, including perhaps even the fundamental right to consult with one's employer, except as the collective agent might permit. Apart from questions of validity, the conclusion that Congress intended such consequences could be accepted only if it were clear that no other construction would achieve the statutory aims.[31]

The Act's provisions do not require such a construction. On the contrary they appear expressly to preclude it. The proviso to Section 2 Fourth in terms reserves the right of "an employee *individually*" to confer with management; and Section 3 First (j) not only requires the Board to give "due notice of all hearings *to the employee* . . . involved in any dispute submitted . . . ," but provides for "parties" to be heard "either *in person*, by counsel, or by other representatives, as they may respectively elect."

These provisions would be inapposite if the collective agent, normally a labor union and an unincorporated association, exclusively were contemplated. Such organizations do not and cannot appear and be heard "in person." Nor would the provision for notice "to *the employee* . . . involved in any dispute" be either appropriate or necessary. If only the collective representative were given rights of submission, notice, appearance

[30] Cf. Steele v. Louisville & N. R. Co., 323 U. S. 192; Tunstall v. Brotherhood of Locomotive Firemen & Enginemen, 323 U. S. 210; Wallace Corp. v. National Labor Relations Board, 323 U. S. 248.

[31] In this connection it is important to recall that the Act does not contemplate the existence of closed shops, to the extent at any rate that the carrier is forbidden to make such agreements. Cf. § 2 Fourth; 78 Cong. Rec. 12,402; 40 Op. Atty. Gen., No. 59 (Dec. 29, 1942). Accordingly the interests of unorganized workers and members of minority unions are concerned in the solution. These are not always adverse to the interests of the majority or of the designated union. But they may be so or even hostile. Cf. the authorities cited in note 30. To regard the statute as so completely depriving persons thus situated of voice in affairs affecting their very means of livelihood would raise very serious questions.

and representation, language more aptly designed so to limit those rights was readily available and was essential for the purpose.

This conclusion accords fully with the terms of the proviso to Section 2 Fourth. It appears to be intended as a qualification, in respect to loss of time and free transportation, of the section's preceding prohibitions against the carrier's giving financial and other aid to labor organizations and to employees in an effort to influence their union affiliations.[32] However, the language clearly contemplates also that the individual employee's right to confer with the management about his own grievance is preserved. There is some indication in the legislative history to this effect.[33] The right is so fundamental that we do not believe the purpose was to destroy it. Cf. 40 Op. Atty. Gen., No. 59, pp. 5, 6 (Dec. 29, 1942); *Hughes Tool Co.* v. *National Labor Relations Board*, 147 F. 2d 69.

Rights of conference are not identical with rights of settlement. But the purpose of conference and the duty to treat is to bring about agreement. The right and the obligation to share in the negotiations are relevant to their aim. Conceivably the statute might confer the right to participate in the negotiations, that is, to be heard before any agreement is concluded, either upon the collective agent or upon the aggrieved employee or employees, at the same time conferring upon the other the final voice in determining the terms of the settlement. This is, in effect, the position taken by each of the parties in this case. But they differ concerning where the final say has been vested. Petitioner maintains it has been given to the union. Respondents say it has been left with them.

In the view we take the Act guarantees to the aggrieved employee more than merely the right to be heard by the union and the carrier. We cannot say that the terms of the proviso to Section 2 Fourth and of Section 3 First (j) are so limited. Moreover, Section 3 First (p) expressly states that the statutory

[32] This undoubtedly was the primary object. The language in the concluding clause, "while engaged in the business of a labor organization," applies literally only to employees travelling upon union business, and has no apparent application to the preceding provision relating to the individual employee's right to confer with management.

[33] Hearings before Committee on Interstate Commerce on H. R. 7650, 73d Cong., 2d Sess., 36, 44, 89.

suit to enforce an award in favor of an aggrieved employee may be brought by "the petitioner," presumably the collective agent, or by the employee. All of these provisions contemplate effective participation in the statutory procedures by the aggrieved employee.

His rights, to share in the negotiations, to be heard before the Board, to have notice, and to bring the enforcement suit, would become rights more of shadow than of substance if the union, by coming to agreement with the carrier, could foreclose his claim altogether at the threshold of the statutory procedure. This would be true in any case where the employee's ideas of appropriate settlement might differ from the union's. But the drastic effects in curtailment of his preexisting rights to act in such matters for his own protection would be most obvious in two types of cases: one, where the grievance arises from incidents of the employment not covered by a collective agreement, in which presumably the collective interest would be affected only remotely, if at all; the other, where the interest of an employee not a member of the union and the collective interest, or that of the union itself, are opposed or hostile. That the statute does not purport to discriminate between these and other cases furnishes strong support for believing its purpose was not to vest final and exclusive power of settlement in the collective agent.[34]

We need not determine in this case whether Congress intended to leave the settlement of grievances altogether to the individual workers, excluding the collective agent entirely except as they may specifically authorize it to act for them, or intended it also to have voice in the settlement as representative of the collective interest. Cf. *Matter of Hughes Tool Company*, 56 N. L. R. B. 981, modified and enforced, *Hughes Tool Co.* v. *National Labor Relations Board, supra.* The statute does not expressly exclude grievances from the collective agent's duty to treat or power to submit to the Board. Both collective and individual interests may be concerned in the settlement where, as in this case, the dispute concerns all members alike, and settlement hangs exclusively upon a single common issue or cause of dispute arising from the terms

[34] Cf. note 37 and text. It is to be doubted that Congress by the generally inclusive language used concerning grievances intended, for instance, to give the collective agent exclusive power to settle a grievance arising independently of the collective agreement, affecting only nonunion men to whose claim the union and the majority were hostile.

of a collective agreement.[35] Those interests combine in almost infinite variety of relative importance in relation to particular grievances, from situations in which the two are hostile or in which they bear little or no relation of substance to each other and opposed to others in which they are identified.[36]

Congress made no effort to deal specifically with these variations.[37] But whether or not the collective agent has rights, independently of the aggrieved employee's authorization, to act as representative of the collective interest and for its protection in any settlement, whether by agreement or in proceedings before the Board, an award cannot be effective as against the aggrieved employee unless he is represented individually in the proceedings in accordance with the rights of notice and appearance or representation given to him by Section 3 First (j). Those rights are separate and distinct from any the collective agent may have to represent the collective interest. For an award to affect the employee's rights, therefore, more must be shown than that the collective agent appeared and purported to act for him. It must appear

[35] But whether or not the carrier's violation affects all the members of the group immediately and alike, so as to create a present basis for claims by each, the violation, though resulting from misinterpretation, would constitute a present threat to the similar rights of all covered by the contract. Cf. Hughes Tool Co. v. National Labor Relations Board, *supra*, 72, 74; 40 Op. Atty. Gen., No. 59, pp. 4, 5, (Dec. 29, 1942).

To leave settlements in such cases ultimately to the several choices of the members, each according to his own desire without regard to the effect upon the collective interest, would mean that each affected worker would have the right to choose his own terms and to determine the meaning and effect of the collective agreement for himself. Necessarily, the carrier would be free to join with him in doing so and thus to bargain with each employee for whatever terms its economic power, pitted against his own, might induce him to accept. The result necessarily would be to make the agreement effective, not to all alike, but according to whatever varied interpretations individual workers, from equally varied motivations, might be willing to accept. To give the collective agent power to make the agreement, but exclude it from any voice whatever in its interpretation would go far toward destroying its uniform application.

[36] Depending upon the substantive character of the claim, its foundation in a collective agreement or otherwise, its intrinsically substantial or insubstantial nature, the number of employees affected, the length of time it remains unsettled, the number of claims allowed so to run, or perhaps other factors, the grievance may be a matter of large moment to the group as a whole or of little or no concern to it and, it may be, of either identical or converse importance to the individual or individuals directly affected.

[37] Congress was concerned primarily with differences between the carrier and the employees, not with differences among the latter or between them, or some of them, and the collective agent. The statute therefore was not drawn with an eye levelled to these problems, except as to choice of representatives, cf. § 2 Fourth; § 2 Ninth; and note 34.

that in some legally sufficient way he authorized it to act in his behalf.[38]

Petitioner's contrary view, as has been indicated, regards the settlement of grievances as part of the collective bargaining power, indistinguishable from the making of collective agreements. The assumption ignores the major difference which the Act has drawn between those functions, both in defining them and in the modes provided for settlement.

To settle for the future alone, without reference to or effect upon the past, is in fact to bargain collectively, that is, to make a collective agreement. That authority is conferred independently of the power to deal with grievances, as part of the power to contract "concerning rates of pay, rules, or working conditions." It includes the power to make a new agreement settling for the future a dispute concerning the coverage or meaning of a pre-existing collective agreement. For the collective bargaining power is not exhausted by being once exercised; it covers changing the terms of an existing agreement as well as making one in the first place.

But it does not cover changing them with retroactive effects upon accrued rights or claims. For it is precisely the difference between making settlements effective only for the future and making them effective retroactively to conclude rights claimed as having already accrued which marks the statutory boundary between collective bargaining and the settlement of grievances. The latter by explicit definition includes the "interpretation or application" of existing agreements. To regard this as part of the collective bargaining power identifies it with making new agreements having only prospective operation; and by so doing obliterates the statute's basic distinction between those functions.[39]

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[38] Authority might be conferred in whatever ways would be sufficient according to generally accepted or "common law" rules for the creation of an agency, as conceivably by specific authorization given orally or in writing to settle each grievance, by general authority given to settle such grievances as might arise, or by assenting to such authority by becoming a member of a union and thereby accepting a provision in its constitution or rules authorizing it to make such settlements.

[39] The distinction holds true although "interpretation or application" may look to the future as well as the past, as it often does. It goes to the source of the right asserted, whether in an antecedent agreement or only to one presently sought. The difference is important for other issues as well as those presently involved, e. g., application of statutes of limitations.

The distinction is not to be ignored or wiped out merely because a particular dispute or agreement may look both to the past and to the future. The special procedure for settling grievances was created because it was intended they should be disposed of differently from disputes over "rates

The Brotherhood had power, therefore, as collective agent to make an agreement with the carrier, effective for the future only, to settle the question of starting time, and that power was derived from the Act itself. In dealing within its scope, the carrier was not required to look further than the Act's provisions to ascertain the union's authority. But it does not follow, as petitioner assumes, that it had the same right to deal with the union concerning the past. That aspect of the dispute was not part of the collective agent's exclusive statutory authority.

If to exclude it severs what otherwise might be considered organic, the severance clearly is one which Congress could make and is one we think it has made, by its definition of grievances and by the provisions for individual participation in their settlement. If, moreover, as petitioner urges, this may make the settlement less convenient than if power to deal with grievances were vested exclusively in the collective agent, that consequence may be admitted. But it cannot outweigh the considerations of equal or greater force which we think Congress has taken into account in preserving the individual workman's right to have a voice amounting to more than mere protest in the settlement of claims arising out of his employment.

From the fact that the Brotherhood occupied the position of collective bargaining agent and as such had power to deal for the future, therefore, petitioner was not entitled to make any assumption concerning its authority to settle the claims accrued for the past or to represent the claimants exclusively in proceedings before the Board. Accordingly for the union to act in their behalf with conclusive effect, authorization by them over and above any authority given by the statute was essential.

III.

Petitioner urges that, apart from the statute, the facts of record show as a matter of law that respondents authorized the Brotherhood to settle the claims, to submit them to the Board, and

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of pay, rules, or working conditions," which were committed exclusively to the collective agent's authority. One important difference preserved the aggrieved employee's rights to participate in all stages of the settlement. Congress therefore, when it preserved those rights, contemplated something more than collective representation and action to make the settlement effective for the past. It follows that the individual employee's rights cannot be nullified merely by agreement between the carrier and the union. They are statutory rights, which he may exercise independently or authorize the union to exercise in his behalf.

to represent them in its proceedings. Respondents deny that authority in any of these respects was given, either by individual authorization or by virtue of the Brotherhood's constitution and rules; and they insist that the record presents these questions as issues of fact.

Stripped of its statutory influences, petitioner's argument comes in substance to this. It is undisputed that from August 27, 1934, to November 23, 1936, when the complaint in Docket No. 3537 was filed, respondents made out time slips and filed many complaints with the carrier's local officials through local officers of the Brotherhood on account of departures from the schedule of Article 6. The question of the article's applicability was a matter of discussion between the Brotherhood and company officials from the time of the transfer in 1934. Respondents admit having authorized the Brotherhood, at a meeting of their local lodge, to file the complaint in Docket No. 3537 and that this complaint was filed in full compliance with the Brotherhood's constitution and rules. The settlement of October, 1938, and the consequent withdrawal of the claim in Docket No. 3537 were made by the same official, Williams, whom respondents had authorized to file the claim and with whom, in effect, both the collective agreement and the Brotherhood's regulations required petitioner to deal concerning the matter.[40] Moreover, the complaint in Docket No. 7324, filed in May, 1939, was filed by Williams and in the same manner as the complaint in Docket No. 3537.

From these facts petitioner concludes that respondents authorized the Brotherhood to settle the claims and to represent them before the Board. In its view, all of these transactions related to the

[40] The collective agreement, of which Article 6 is a part, provides: "Any controversy arising *as to the application* of the rules herein agreed upon . . . shall be taken up . . . " by the general grievance committee with the general superintendent of the carrier, "and in the event of their failure to agree upon a satisfactory settlement, the Committee may appeal to the Vice President." (Emphasis added.) Petitioner says this provision bound it to deal only with the general committee.

Petitioner also relies upon Rule 10 of the Brotherhood's constitution and general rules as imposing the same duty:

"Whatever action may be taken by the General Grievance Committee or Board of Adjustment of any system within the meaning of the above General Rules shall be law to the Lodges on that road until and unless reversed by the Board of Appeals, and if any member refuses to vote or abide by the action of such General Grievance Committee or Board of Adjustment, he shall be expelled from the Brotherhood for violation of obligation."

See also note 8.

same subject matter, namely, whether Article 6 was applicable in the Whiting yard, the only difference being that the relief sought in the two proceedings was not the same; and that difference is not material.

Respondents differ concerning the effect of these facts and others they set forth. They allege that under the Brotherhood's constitution and rules neither Williams and Johnson nor the general grievance committee could "revise or change a general wage 'schedule' or agreement concerning rates of pay, nor working conditions, unless authorized to do so by a majority vote of the lodges, or by a majority vote of the membership in the system"; that claims of individual members for back compensation could not be released without specific authority given individually; that no such authority was given; and that the carrier had knowledge of these limitations. They further allege that Williams and Johnson failed to notify them of the settlement, as the by-laws required;[41] and deny that they knew of the settlement, the proceedings in Docket 7324 or the award until after the award was made, when they promptly repudiated it.[42] They say accordingly that Williams acted without authority from them directly or through the Brotherhood's regulations in submitting and presenting the claims; and that the award is invalid not only for this reason but also because no notice of the proceeding was given to them.

It is apparent that the parties are at odds upon the inferences to be drawn from the facts and their legal effects rather than upon the facts themselves. Respondents deny, and petitioner apparently does not claim, that they at any time individually and specifically authorized the Brotherhood or its officials to compromise their claims for money due or to act for them exclusively in Board proceedings concerning those claims. If there is an issue in this respect it is obviously one of fact concerning which evidence and findings would be required.

The real issues, as we view the record, come down to whether respondents assented, in legal effect, to the final settlement of their

41 This, they say, was because Williams did not regard the agreement as waiving the money claims, since he did not give them the required notice and shortly after the settlement filed the money claims with the Board. Cf. note 6.

42 Respondents also attack the settlement because it was not signed by the third member of the grievance committee, the local grievance chairman. This objection borders on the frivolous.

claims by the union or to exclusive representation by it in any of the following ways: (1) by making complaints through local union officials; (2) by authorizing the Brotherhood to submit the complaint in Docket No. 3537; (3) by virtue of the Brotherhood's regulations; (4) by virtue of the collective agreement.

The collective agreement could not be effective to deprive the employees of their individual rights. Otherwise those rights would be brought within the collective bargaining power by a mere exercise of that power, contrary to the purport and effect of the Act as excepting them from its scope and reserving them to the individuals aggrieved. In view of that reservation the Act clearly does not contemplate that the rights saved may be nullified merely by agreement between the carrier and the union.

Nor can we say as a matter of law that the mere making of complaints through local Brotherhood officials amounted to final authorization to the union to settle the claims or represent the employees before the Board. Neither the statute nor the union's regulations purported to give these effects to that conduct. The time slips apparently were filed by the employees themselves. The record shows only the general fact that complaints concerning departures were made through local officials. More than this would be required to disclose unequivocal intention to surrender the individual's right to participate in the settlement and to give the union final voice in making it together with exclusive power to represent him before the Board. The making of complaints in this manner was only preliminary to negotiation and equivocal at the most.

Nor can we say, in the present state of the record, that the union's regulations unequivocally authorized the general grievance committee or its chairman either to settle the claims or to act as exclusive representative before the Board. The parties rely upon apparently conflicting provisions or, if they are not actually in conflict, then upon different ones, the applicability of some of which is in dispute. Thus respondents rely upon Rule 3, which forbids change in existing agreements without the required vote of local lodges or system membership, and petitioner says the rule is not applicable to the dispute in this case. Whether or not the rule is applicable is a question of fact to be determined in the light of whatever evidence may be presented to sustain the one view or the other. Conceivably it may be intended to apply

only where no grievance is involved or to the settlement of grievances and other disputes as well. But we cannot say, in the absence of further light than is now available, that on its face the rule bears only the one construction or the other.

Similar difficulties arise in connection with the other regulations. Only some of them are set forth in the printed record, although the full constitution and rules were made a part of the record proper by petitioner. The rules and regulations do not purport to require members to negotiate and settle their grievances only through the union. The general committee can act only when a grievance is referred to it by a local lodge. The rules are extensive, parts of them appear to involve possible conflict, the parties differ concerning their effects, and the mode of their operation quite obviously may be largely affected by the manner in which they are applied in practice. Their construction and legal effect are matters of some complexity and should not be undertaken in a vacuum apart from the facts relating to their application in practice. Because both factual and legal inferences would be involved in determining the effects of the regulations to bring about a surrender of the individual rights to take part in the settlement and in the Board's proceedings, those effects cannot be determined as a matter of law in the first instance here.

Nor can we say as a matter of law that authorizing the submission in Docket No. 3537, without more, constituted authorization either to make the agreement of settlement or to represent the employees in Docket No. 7324. The matter requires some explication in the light of the view we have taken concerning the rights of an aggrieved employee in the settlement of grievances. In that view no valid settlement can be made unless he agrees. If settlement by agreement after negotiation fails, he has the right to submit the dispute to the Board for decision. If it is submitted he has rights of notice, hearing and individual representation according to his choice.

All these rights are separate and distinct, though closely related. A surrender or delegation of one would not result in surrender of the others as a matter of law or necessarily as a matter of fact. Whether in particular circumstances it might do so would depend upon whether they were considered sufficient to disclose such an intent.[43] It follows that authority to concur in an agree-

[43] In other words, the aggrieved employee has the right to delegate his power to concur in an agreement of settlement, but at the same time to

ment of settlement does not imply without more authority to represent the employee in Board proceedings, or the latter the former. This is true when the authority is given to the collective agent as it is when it is given to another. That circumstance is not controlling. It only bears as one factor in the total situation. Accordingly in this case the mere fact that the respondents authorized the union to make the submission and to represent them in Docket No. 3537 did not imply authority to make the settlement agreement or to represent them in the quite different later proceedings in Docket No. 7324.

The record does not show conclusively that prior to the submission in Docket No. 3537 the employees had finally committed the whole matter of their claims into the union's hands in such a manner as to constitute a surrender of their individual rights to concur in any agreement of settlement. That conclusion is not justified merely from the fact that the union participated in negotiations with the carrier.

Moreover, the authorization, to act in Docket No. 3537, obviously was given after efforts to secure settlement by negotiation and agreement were considered to have failed. Only then was anyone entitled to make the submission. Accordingly that authorization was entirely consistent with the idea that no further negotiations would be had, and therefore, without more, also with the idea that no authority to negotiate further was implied. It may be that upon a full hearing concerning the course and scope of the negotiations prior to this submission, the evidence will justify a conclusion that the respondents had authorized the union to act finally for them. But the record in its present state does not justify that conclusion as a matter of law.[44]

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reserve his rights to make submission to the Board and of appearance and representation before it, or conversely to reserve his right to concur and delegate the rights of submission and representation. To what extent he may delegate one or all depends therefore upon the intent with which he makes the particular delegation as disclosed by the circumstances in which it is made, or gives evidence of such intent by his conduct, and this will be a question of fact unless the circumstances so clearly show he intended to make the delegation claimed that no other conclusion is possible.

[44] It is true that respondents' position concerning the consequences of their authorization to make the submission in Docket No. 3537 is not altogether consistent. For in claiming that they authorized submission only to determine the applicability of Article 6 for the future, and not to determine the question of retroactivity so as to establish or conclude adversely the basis for their individual monetary claims, they appear to ignore, as does petitioner in some of its contentions, the distinction between collective bargaining

It may be true also that if Docket No. 3537 had been carried to decision the award would have been effective to determine the rights of the parties. But no award was made in that proceeding. It was terminated and the claim was withdrawn. Whether or not that action or other events occurring later were effective to terminate the authority given to submit for the Board's determination the issue which was the foundation of respondents' monetary claims or whether that authority continued in spite of the changed conditions are questions also to be determined from a factual evaluation of the entire situation, essentially preliminary to determination of legal effects, which we cannot make.

Since upon the total situation we cannot say as a matter of law that respondents had authorized the Brotherhood to act for them in Docket No. 7324, whether in submitting the cause or in representing them before the Board; since it is conceded also that they were not given notice of the proceedings otherwise than as the union had knowledge of them; and since further they have denied that they had knowledge of the proceedings and of the award until after it was entered, the question whether the award was effective in any manner to affect their rights must be determined in the further proceedings which are required. The crucial issue in this respect, of course, will be initially whether respondents had authorized the Brotherhood in any legally sufficient manner to represent them, individually, in the Board's proceedings in Docket No. 7324.

Until that question is determined, it is not necessary for us to pass upon the important issue concerning the finality and conclusive effect of the award, or to determine the validity and legal effect of the compromise agreement. We accordingly express no opinion concerning those issues.

The judgment is affirmed. The cause is remanded for further proceedings in conformity with this opinion.

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and the settlement of grievances as the Act defines them. Cf. note 39 and text. If their purpose was merely to authorize settlement for the future, without retroactive effects, the submission to the Adjustment Board was misconceived, since it has no power to render a decision requiring the carrier or the union to make a new agreement. Its only authority, under the Act, is to determine what they have agreed upon previously or, outside the scope of a collective agreement, what rights the carrier and its employees may have acquired by virtue of other incidents of the employment relation. Such an issue by its very nature looks to the past, though it may also seek compliance for the future.

SUPREME COURT OF THE UNITED STATES.

No. 160.—October Term, 1944.

Elgin, Joliet and Eastern Railway Company, Petitioner, *vs.* G. W. Burley, et al.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

[June 11, 1945.]

Mr. Justice Frankfurter, dissenting.

On July 27, 1934, the Brotherhood of Railroad Trainmen made an agreement with petitioner, Elgin, Joliet and Eastern Railway Company, affecting its yardmen whereby the starting time for switching crews was fixed. The respondents are employed as switching crews in the Whiting, Indiana yard of petitioner. They are all members of the Brotherhood. Observance by petitioner of this yard agreement was called into question. After abortive conferences for the adjustment of these claims between officials of petitioner and of the Brotherhood, C. H. Williams, General Chairman of the Brotherhood General Grievance Committee, filed a complaint covering several grievances with the National Railroad Adjustment Board, created by the Railway Labor Act of 1934, 48 Stat. 1185, 45 U. S. C. § 151 *et seq.*, to compel petitioner's compliance with the agreed time. In November, 1936, the cases were duly docketed. Before they came to be heard, petitioner, on October 28, 1938, proposed settlement of numerous claims against it by the Brotherhood then pending before the Adjustment Board. Among these claims was the dispute as to starting time. Petitioner agreed for a ninety-day trial period, beginning November 15, 1938, to abide by the time fixed in the 1934 agreement. But its offer was conditioned "on a complete settlement and withdrawal of all cases now pending either before the board, or under discussion with this office . . . and it is further understood that in the event these settlements are accepted that the claims listed in this letter cover all claims of a similar nature, and that no other claims covering the same or like situations will be presented when such claims arise from causes occurring prior to the date of this settlement." On October 31, 1938, settlement

on these terms was accepted for the yardmen by Williams, General Chairman, and S. F. Johnson, the Secretary of the Brotherhood's General Grievance Committee. On the same day and upon request of the Brotherhood and Railway, the cases were removed from its docket by the Adjustment Board.

Later the Brotherhood filed with the Adjustment Board a second complaint claiming money damages on behalf of its members for violation of the 1934 agreement. The Board, by formal award, denied the claim on the ground that the "evidence shows that the parties to the agreement disposed of the claim here made by the letter of carrier dated October 28th, 1938, accepted by employees October 31, 1938."

Respondents then filed this suit in the District Court for damages. Petitioner invoked the 1938 settlement and the Board's award thereon as a bar, and moved for summary judgment. Respondents resisted this motion by denying the authority of the Brotherhood officials to present their claims to the Board or to agree to the settlement. The District Court gave summary judgment for the petitioner which was reversed by the Circuit Court of Appeals for the Seventh Circuit on the ground that the question of authority of the Brotherhood officials raised an issue of fact for trial by the District Court. 140 F. 2d 488. The correctness of this ruling is the important question now before us. 323 U. S. 690.

We have had recent occasion to consider the Railway Labor Act in other aspects. *Switchmen's Union* v. *Board*, 320 U. S. 297; *General Commitee* v. *M.-K.-T. R. Co.*, 320 U. S. 323; *General Committee* v. *Sou. Pac. Co.*, 320 U. S. 338. The complexities which the problems in those cases laid bare, make clear that the specific question immediately before us cannot be isolated from the scheme and structure of the Railway Labor Act as an entirety. The Act in turn cannot be appreciated apart from the environment out of which it came and the purposes which it was designed to serve.

From the point of view of industrial relations our railroads are largely a thing apart. The nature and history of the industry, the experience with unionization of the roads, the concentration of authority on both sides of the industry in negotiating collective agreements, the intimacy of relationship between the leaders of the two parties shaped by a long course of national, or at least regional, negotiations, the intricate technical aspects of these agree-

ments and the specialized knowledge for which their interpretation and application call, the practical interdependence of seemingly separate collective agreements—these and similar considerations admonish against mutilating the comprehensive and complicated system governing railroad industrial relations by episodic utilization of inapposite judicial remedies.

The Railway Labor Act of 1934 is primarily an instrument of government. As such, the view that is held of the particular world for which the Act was designed will largely guide the direction of judicial interpretation of the Act. The railroad world for which the Railway Labor Act was designed has thus been summarized by one of the most discerning students of railroad labor relations: "The railroad world is like a state within a state. Its population of some three million, if we include the families of workers, has its own customs and its own vocabulary, and lives according to rules of its own making. . . . This state within a state has enjoyed a high degree of internal peace for two generations; despite the divergent interests of its component parts, the reign of law has been firmly established." Garrison, The Railroad Adjustment Board: A Unique Administrative Agency (1937) 46 Yale L. J. 567, 568-69.

The Railway Labor Act of 1934 is an expression of that "reign of law" and provides the means for maintaining it. Nearly half a century of experimental legislation lies behind the Act. It is fair to say that every stage in the evolution of this railroad labor code was progressively infused with the purpose of securing self-adjustment between the effectively organized railroads and the equally effective railroad unions and, to that end, of establishing facilities for such self-adjustment by the railroad community of its own industrial controversies. These were certainly not expected to be solved by ill-adapted judicial interferences, escape from which was indeed one of the driving motives in establishing specialized machinery of mediation and arbitration. Government intervention of any kind was contemplated only as a last resort for the avoidance of calamitous strikes.

The landmarks in this history, tersely summarized, are the meager act of October 1, 1888, 25 Stat. 501, providing for voluntary arbitration; the Erdman Act of June 1, 1898, 30 Stat. 424, securing government mediation and arbitration, but applicable only to those actually engaged in train service operations; the New-

lands Act of July 15, 1913, 38 Stat. 103, providing for a permanent board of mediation and also a board of arbitration; the Adamson Act of September 3, 1916, 39 Stat. 721, as to which see *Wilson* v. *New*, 243 U. S. 332; Order No. 8 of February 21, 1918, formulating the labor policy of the Government after the United States took over the railroads, see Hines, War History of American Railroads (1928) p. 155 *et seq.*; the more elaborate machinery established by Title III of the Transportation Act of 1920, 41 Stat. 456, 469, for adjustments of these controversies, which in its turn was repealed and replaced by the Railway Labor Act of May 20, 1926, 44 Stat. 577, legislation agreed upon between the railroads and the Brotherhoods and probably unique in having been frankly accepted as such by the President and Congress.[1] The actual operation of this legislation partly disappointed the hopes of its sponsors, and led, for the still greater promotion of self-government by the railroad industry, to the Act of 1934.

The assumption as well as the aim of that Act is a process of permanent conference and negotiation between the carriers on the one hand and the employees through their unions on the other. Section 2, First, provides "It shall be the duty of all carriers . . . and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise . . .". Section 2, Second, provides "All disputes between a carrier . . . and its . . . employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier . . . and by the employees thereof interested in the dispute." According to § 2, Sixth, "In case of a dispute . . . arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, it shall be the duty of the designated representative or representatives of such carrier . . . and of such employees, within ten days after the receipt of notice of a desire on the part of either party to confer in respect to such dispute, to specify a time and place at which such conference shall

[1] In his message of December 8, 1925, to Congress, President Coolidge stated: "I am informed that the railroad managers and their employees have reached a substantial agreement as to what legislation is necessary to regulate and improve their relationship. Whenever they bring forward such proposals, which seem sufficient also to protect the interests of the public, they should be enacted into law." 67 Cong. Rec. 463.

be held . . .". Section 3, First (i) directs that disuptes growing out of grievances or the interpretation or application of agreements concerning rates of pay, rules, or working conditions be handled by conference and negotiation, including resort if necessary to the chief operating officer of the carrier. Compliance with these statutory duties is a prerequisite to appeal to the National Railroad Adjustment Board. The purpose of this legislation is the exertion of maximum pressure toward amicable settlement between the parties. Resort to the Adjustment Board is the last step in the statutory process.

In the controversy before us an amicable adjustment between the parties—the goal of the legislation—had been achieved by pursuing the course which the Act of 1934 directed. We are now asked to nullify this settlement, arrived at after prolonged negotiations, and to open the door of litigation to new discords. Not only is it sought to revive the dispute and to restore it to the status it had before the Adjustment Board more than eight years ago. The respondents claim that after all these years they have a right to repudiate their bargaining agents and to try the authority of these agents as though this were a conventional lawsuit involving the responsibility of a principal for the conduct of his agent.

As members of their Brotherhood, respondents were of course familiar with the procedure whereby the union speaks for them both to the Railroad and before the Adjustment Board. The Brotherhood's "Constitution and General Rules", which the respondents made part of their case below, are clear about this. Rule No. 7 declares that, after a grievance has been transmitted to a General Grievance Committee, that Committee "shall have power to alter, amend, add to or strike out . . . any part or all of any complaint or claim submitted to the committee, subject to appeal to the entire General Committee and/or Board of Appeals. A general grievance Committee may authorize their chairman to handle all grievances received from local lodges with the management for settlement . . .". Respondents cannot deny that the Brotherhood officials had authority to seek compliance by the railroad with the starting time agreement through the Adjustment Board. In view of the sweeping power of the General Grievance Committee to settle grievances, the settlement that was made on behalf of the Brotherhood is invulnerable. The attack on the settlement because it was signed by only two of the three members

of the Committee is frivolous. Such procedure is not at all unusual. Williams and Johnson settled other grievances in like manner, many of them involving claims for money. The Brotherhood's own rules sanction such action in that the Committee may authorize the Chairman to handle all grievances.

This is not a simple little case about an agent's authority. Demands of the employees' representative imply not only authority from those for whom he speaks but the duty of respect from those to whom he speaks. The carrier is under a legal duty to treat with the union's representative for the purposes of the Railway Labor Act. Section 2, Ninth; see *Virginian Ry.* v. *Federation*, 300 U. S. 515. We do not have the ordinary case where a third person dealing with an ostensible agent must at his peril ascertain the agent's authority. In such a situation a person may protect himself by refusing to deal. Here petitioner has a duty to deal. If petitioner refuses to deal with the officials of the employees' union by challenging their authority, it does so under pain of penalty. If it deals with them on the reasonable belief that the grievance officials of the Brotherhood are acting in accordance with customary union procedure, settlements thus made ought not to be at the hazard of being jettisoned by future litigation. To allow such settlements to be thus set aside is to obstruct the smooth working of the Act. It undermines the confidence so indispensable to adjustment by negotiation, which is the vital object of the Act. See *Division 525, Order of Ry. Conductors of America* v. *Gorman*, 133 F. 2d 273, 278.

But respondents claim that irrespective of the authority of the Brotherhood officials to handle claims for the enforcement of the agreed starting time, Williams did not have authority to present to the Adjustment Board the claim for damages due to respondents for petitioner's alleged past violation of the starting-time agreement. They insist that there is no relation between a claim for money resulting from the violation of a collective agreement and a claim for the enforcement of a collective agreement. But surely this is to sever that which is organic. It wholly disregards the nature of such a collective agreement, its implications and its ramifications. In passing on the claim for money damages arising out of the yard agreement, any tribunal would have to examine, interpret and apply the collective agreement precisely as it would if the issue were the duty to observe the agreement in the future.

An award based on the application of the collective agreement would, quite apart from technical questions of *res judicata*, affect future claims governed by the same collective agreement whatever the particular forms in which the claims may be cast. To find here merely an isolated, narrow question of law as to past liability is to disregard the ties which bind the money controversy to its railroad environment. Such a view is blind to the fact that "all members of the class or craft to which an aggrieved employee belongs have a real and legitimate interest in the dispute. Each of them, at some later time, may be involved in a similar dispute." 40 Ops. Atty. Gen., No. 59 (Dec. 29, 1942) pp. 4-5. Indeed, such a view leaves out of consideration not only the significant bearing of the construction of the same collective agreement on parts of the carrier's lines not immediately before the Court. It overlooks the relation of a provision in a collective agreement with one railroad to comparable provisions of collective agreements with other roads.

To allow the issue of authorization after an award by the Board to be relitigated in the courts is inimical to the internal government of the Brotherhood. Union membership generates complicated relations. Policy counsels against judicial intrusion upon these relations. If resort to courts is at all available, it certainly should not disregard and displace the arrangements which the members of the organization voluntarily establish for their reciprocal interests and by which they bound themselves to be governed. The rights and duties of membership are governed by the rules of the Brotherhood. Rule 10 concerns objections to official action: "Whatever action may be taken by the general grievance committee . . . shall be law to the lodges on that road until the next meeting of the board of appeals, and if any member refuses to vote or abide by the action of such general grievance committee or board of adjustment he shall be expelled from the Brotherhood for violation of obligation". To ask courts to adjudicate the meaning of the Brotherhood rules and customs without preliminary resort to remedial proceedings within the Brotherhood is to encourage influences of disruption within the union instead of fostering these unions as stabilizing forces. Rules of fraternal organizations, with all the customs and assumptions that give them life, cannot be treated as though they were ordinary legal documents of settled meaning. "Freedom of litigation, for instance, is hardly so essential a part of the democratic process that the courts should be

asked to strike down all hindrances to its pursuit. The courts are as wise, to take an example of this, in adhering to the general requirement that all available remedies within the union be exhausted before redress is sought before them as they are unwise in many of the exceptions they have grafted upon this rule." Witmer, Civil Liberties and the Trade Union (1941) 50 Yale L. J. 621, 630. To an increasing extent, courts require dissidents within a union to seek interpretation of the organization's rules and to seek redress for grievances arising out of them before appropriate union tribunals. Compare *Norfolk & W. Ry. Co.* v. *Harris*, 260 Ky. 132; *Agrippino* v. *Perrotti*, 270 Mass. 55; *Snay* v. *Lovely*, 276 Mass. 159; *Webb* v. *Chicago, R. I. & G. Ry. Co.*, 136 S. W. 2d 245.

The Railway Labor Act, as the product of long experience, is a complicated but carefully devised scheme for adjusting the relations between the two powerful groups constituting the railroad industry. It misconceives the legislation and mutilates its provisions to read into it common law notions for the settlement of private rights. If, when a dispute arises over the meaning of a collective agreement, the legally designated railroad bargaining unit cannot negotiate with the carrier without first obtaining the specific authorization of every individual member of the union who may be financially involved in the dispute, it not only weakens the union by encouraging divisive elements. It gravely handicaps the union in its power to bargain responsibly. That is not all. Not to allow the duly elected officers of an accredited union to speak for its membership in accordance with the terms of the internal government of the union and to permit any member of the union to pursue his own interest under a collective agreement undermines the very conception of a collective agreement. It reintroduces the destructive individualism in the relations between the railroads and their workers which it was the very purpose of the Railway Labor Act to eliminate. To allow every individual worker to base individual claims on his private notions of the scope and meaning of a collective agreement intended to lay down uniform standards for all those covered by the collective agreement, is to permit juries and courts to make varying findings and give varying constructions to an agreement inevitably couched in words or phrases reflecting the habits, usage and understanding of the railroad industry. Thus will be introduced those dislocating

differentiations for workers in the same craft which have always been among the most fertile provocations to friction, strife, and strike in the railroad world. The Railway Labor Act, one had supposed, would be construed so as to reduce and not to multiply these seeds of strife.

In order to avoid mischievous opportunities for the assertion of individual claims by shippers as against the common interest of uniformity in construing railroad tariffs, this Court so construed the Interstate Commerce Act in the famous *Abilene Cotton Oil* case, 204 U. S. 426, as to withdraw from the shipper the historic common law right to sue [redacted] in the courts. It required resort to the Interstate Commerce Commission because not to do so would result in the impairment of the general purpose of that Act. It did so because even though theoretically this Court could ultimately review such adjudications imbedded in the various judicial judgments—if a shipper could go to a court in the first instance—there would be considerations of fact which this Court could not possibly disentangle so as to secure the necessary uniformity. The beneficent rule in the *Abilene Cotton Oil* case was evolved by reading the Interstate Commerce Act not as though it were a collection of abstract words, but by treating it as an instrument of government growing out of long experience with certain evils and addressed to their correction. Chief Justice White's opinion in that case was characterized by his successor, Chief Justice Taft, as a "conspicuous instance of his unusual and remarkable power and facility in statesmanlike interpretation of statute law." 257 U. S. xxv. The provisions of the Railway Labor Act do not even necessitate such a creative act of adjudication as this Court in the *Abilene* case unanimously accomplished. The Railway Labor Act contains no embarrassing specific provision, as was true of § 22 of the Interstate Commerce Act, 24 Stat. 379, 387, calling for subordination to the main purpose of the legislation. The considerations making for harmonious adjustment of railroad industrial relations through the machinery designed by Congress in the Railway Labor Act are disregarded by allowing that machinery to be by-passed and by introducing dislocating differentiations through individual resort to the courts in the application of a collective agreement.

Since the claim before the Adjustment Board was for money, there remains the question whether its disposition was open to ju-

dicial review. The Railway Labor Act commands that the Board's "awards shall be final and binding upon both parties to the dispute, except insofar as they shall contain a money award." Section 3, First (m). But the determination here in controversy does not "contain a money award" so as to be excepted from the final and binding effect given other awards. The obvious meaning of "money award" is an award directing the payment of money, not one denying payment. See *Berryman* v. *Pullman Co.*, 48 F. Supp. 542. We are pointed to no aids to construction that should withhold us from giving the familiar term "money award" any other than its ordinary meaning as something that awards money. This construction is confirmed by comparison with the provisions of the Interstate Commerce Act dealing with reparation orders. Since both Acts came out of the same Congressional Committees one finds, naturally enough, that the provisions for enforcement and review of the Adjustment Board's awards were based on those for reparation orders by the Interstate Commerce Commission. Compare Railway Labor Act, § 3, First (p) with Interstate Commerce Act, as amended by § 5 of the Hepburn Act, 34 Stat. 584, 590, 49 U. S. C. § 16(1), (2). If a carrier fails to comply with a reparation order, as is true of non-compliance with an Adjustment Board award, the complainant may sue in court for enforcement; the Commission's order and findings and evidence then become *prima facie* evidence of the facts stated. But a denial of a money claim by the Interstate Commerce Commission bars the door to redress in the courts. *Baltimore & Ohio R. Co.* v. *Brady*, 288 U. S. 448; *I. C. C.* v. *United States*, 289 U. S. 385, 388; *Terminal Warehouse* v. *Penn. R. Co.*, 297 U. S. 500, 507.

The Railway Labor Act precludes review of the Board's award; and, since authorization of the Brotherhood officials to make the settlement is not now open to judicial inquiry, the judgment calls for reversal.

The Chief Justice, Mr. Justice Roberts and Mr. Justice Jackson join in this dissent.